

CASES OF CONSCIENCE FOR ENGLISH- SPEAKING COUNTRIES, VOLUME I

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Preface

Few, if any, of those for whom this book is intended will be disposed to deny the usefulness and necessity of Casuistry for the ecclesiastical student and the confessor. If the priest's work in the cure of souls and in the confessional is to be done fruitfully and if disastrous mistakes are to be prevented as far as possible, previous and solid training is absolutely necessary. Mere speculative knowledge is not sufficient to fit the priest for his work. His duty is to guide souls according to the principles of the Catholic faith, and a merely speculative knowledge of those principles will not enable him to perform the task imposed upon him. Nobody supposes that book knowledge alone will fit the judge or the doctor for the practical work of the law courts and the sick-room. As little will a knowledge of speculative theology fit the priest for the work that he has to do. He is both a judge and a doctor. Only the cases that he has to decide are often more intricate than those which are heard in the law courts, and the diseases which he is called upon to heal are more difficult to diagnose accurately and to prescribe for than are those of the body. It adds to the difficulty that such practical training for their profession as the judge and the lawyer get is not possible in the case of the priest. The medical student walks the wards of the hospitals and observes how cases of bodily disease are treated by an expert. The judge usually has a long preparatory training in the practice of the law. No such practical training is possible for the young aspirant to the priesthood.

The next best thing to actual experience in the cure of souls is to provide him with books such as this, where the principles that he has already learned are applied to concrete cases. For many years past my official duties have laid on me the task of providing such practical cases for the students under my care. I have always striven to keep the end steadily in view. The moral principles were supposed to be already known. What was wanted was to train the young student so that he might be able to detect at once what principles were to be applied to a given concrete case, and to train his judgment so that he might apply those principles correctly. In this volume I have collected together the greater part of the cases that I have given on the general treatises of Moral Theology, the Commandments of God, and the Precepts of the Church. I reserve the others for a second volume. I think the experienced reader will acknowledge that the cases are practical and real, such as are met with in actual life. The questions put after each case are intended to indicate some of the chief principles which have to be applied in the case, and the practical solution is given at the end. I have not thought it necessary in this book to give full answers to the questions proposed. They are book questions, and the answers to them may be found for the most part in any of the text-books of Moral Theology. For convenience I have often given a reference to my "Manual of Moral Theology." I thought it advisable to keep the cases in Latin as they were drawn up in that language, but as English is largely used in the conference cases of the clergy the answers to the questions and the solutions are almost wholly given in English.

THOMAS SLATER, S.J.

AUGUST 25, 1910.

Human Acts

Case 1. Constituents of a Human Act

Among the parishioners and penitents of Titius the priest is Paul, who for several years has been addicted to drunkenness. Paul, however, is not continuously intoxicated, but, after intervals of about two months given to sobriety, thereafter for a month or six weeks he is never perfectly sober. When Titius, however, warns him about the injuries inflicted by drunkenness upon himself and his family, as well as about the scandal given to others, and proposes remedies, Paul says to him that he is no longer able to restrain himself from being borne at fixed times, like a brute animal, toward excessive drinking, all motives to the contrary being well known but in no way standing in the way. Titius indeed has heard of the disease of the will which is called *aboulia* by some, and he knows that men sometimes become insane through drunkenness; but his penitent, in other matters when he is sober, is as far as possible removed from insanity. Therefore, he does not know how Paul is to be treated, either inside or outside the confessional. Hence it is asked:

1. What is required for a human act and for sin?
2. Are there persons insane in one matter who nevertheless are sane in others?
3. Are habitual sinners who have lost free choice thereby guiltless if they indulge the vice?
4. What is to be said concerning the case?

SOLUTION

1. What is required for a human act and for sin to be imputable?

We are not responsible for those actions over which we have no control. We are responsible for those which we freely produce. Such are called by divines “human acts,” and they proceed freely from the will with an intellectual knowledge of the end. Hence three conditions are required in order that an action may be imputed to us: (a) It must proceed from the will; all moral responsibility lies there; it is not sufficient if we are forced against our will to do it, nor if it proceeds merely from the reflex action of the nerves and muscles. (b) It must proceed freely from the will. If our will is inevitably determined to action by the antecedent circumstances, we can not be blamed for what follows; we could not help it. (c) In order that free will may act, a suitable object must be proposed to it by the intellect — *Nil volitum quin precognitum*. An action which is against right reason and known to be such will be imputable to us as sin if those three conditions are verified.

2. Do monomaniacs exist?

Suarez and some other theologians denied that they did on the ground that capacity for free moral action depends on the power of apprehending general principles and drawing conclusions from them. But one who can not do this in one class of matters can not do it in others. In reply it may be said that this would be true if special matters did not exert a special disturbing influence on kleptomaniacs, for example. When certain objects are put within the reach of those unfortunates, the desire to steal them becomes so overpowering that the deliberative faculty is in abeyance, and the

resulting theft is not free. In other matters there may be no such disturbing influence at work, and kleptomaniacs are therein free and sane.¹

1 Frins., *De Actibus Humanis*, part i, nn. 236, 237.

3. Are those who have lost self-control through habitual indulgence in vice on that account guiltless?

This question supposes that self-control may be lost by habitual self-indulgence in vice. The fact is notorious. It does not follow that such people are not responsible for what they do in their insanity. In so far as they are the free cause of their loss of self-control, the evil that they do in this state will be *voluntary in causa*, like sins committed by a drunken man, and therefore imputable to them.²

2 St. Thomas, *Summa*, I-II, q. 77, a. 7.

4. Paul, the parishioner of Titius, has been addicted to drink for many years. However, he did not get drunk regularly; he would be sober for a couple of months, and then he would have a drinking bout for a month or six weeks, during which time he was never perfectly sober. Titius points out to him the ruin he is bringing on himself and on his family, and the scandal he causes to others. Paul asserts that he can not help it, and that he is driven to drink like a brute when the fit seizes him. This may be true. As Cardinal Mercier says: “Sans doute, sous diverses influences — hérédité, alcoolisme, débauche, habitudes vicieuses, certain régime des prisons, etc. — la responsabilité est, chez plusieurs sujets, atténuée; il est vraisemblable que chez quelques-uns elle n’est pas ou n’est plus suffisante pour justifier le qualificatif *criminel*. Il y a des monstres sociaux qui ne devraient pas tomber sous les coups de la justice pénale, mais contre lesquels la société a néanmoins le droit et le devoir de se prémunir ou de se défendre, au nom de la mission générale de gouvernement qui lui incombe.”¹

1 *Psychologie [Psychology]*, vol. ii, p. 146.

Literal English translation of the preceding French quotation: “Without doubt, under various influences—heredity, alcoholism, debauchery, vicious habits, a certain prison regime, etc.—responsibility is diminished in several subjects; it is likely that in some it is not, or is no longer, sufficient to justify the designation *criminal*. There are social monsters who ought not to fall under the blows of penal justice, but against whom society nevertheless has the right and the duty to protect or defend itself, in the name of the general mission of government incumbent upon it.”

If what Paul asserts is true in his case, the best remedy would be to get him to go to a home for inebriates, or to undergo treatment for alcoholism. We must suppose the habit to have been voluntarily formed with at any rate some confused advertence to the danger incurred, and so Paul can not be held guiltless even if now he can not help getting drunk. But absolute loss of control should not readily be presumed. Between this stage and that of the temperate man there are innumerable grades of greater or less power of self-control. The confessor will be wise if he presumes guilt, but sometimes, as in Paul’s case, leaves its degree to the judgment of God. If Paul can not go to a home, the confessor will prescribe the avoidance of occasions of sin, constant occupation, and work, preferably in the open air, fervent prayer for help to God, and the frequent reception of the sacraments; and eating an apple or drinking some harmless beverage may be suggested when the

craving for drink comes on. He may also usefully advise Paul to join some Catholic association for the cultivation of temperance, such as the League of the Cross.

Case 2. Voluntary Ignorance

Albert, a young Catholic who applies himself to the study of medicine with this intention, that after his studies have been completed he may practise the medical art, does not hesitate also to give a great span of time to pleasures. His parents and teachers warn him to prepare himself more diligently for undertaking that rather burdensome state; nevertheless, matters proceed almost as before. At fixed times he undergoes examinations with by no means unhappy success, since he always gives evidence of sufficient learning, although because of laziness he is ignorant of some things in each examination. Finally, at some point, he is admitted to practise the art, and he goes to a certain city in order to seek a livelihood there by his art. He undertakes the care of the sick, and immediately finds himself to be ignorant of many things altogether necessary for him to know, since very often the remedies prescribed by him seem to be of no benefit, and indeed not rarely to increase the disease. After some months he is so distressed by scruples of conscience that he lays open his whole condition to his confessor and asks what is to be done. Hence it is asked:

1. When is ignorance culpable?
2. When a bad act has been performed from invincible ignorance, at what time and in what way is sin committed?
3. What is to be said concerning the case?

SOLUTION

1. When is ignorance culpable?

Ignorance is culpable if it concerns what we are bound to know and if it is voluntary. There is no guilt attaching to ignorance about what we are under no obligation to know. Neither can we be blamed for ignorance which we can not help. The degree of culpability for voluntary ignorance about what we are bound to know will depend upon the seriousness of the matter and the degree of voluntariness in the ignorance. If the matter is serious and if there was great negligence in not procuring the requisite knowledge, grave sin will be committed. On the other hand, if either the matter be trivial or the negligence slight, no more than a venial sin will be committed.

2. When a bad action is done out of voluntary ignorance, is the sin committed when the agent culpably neglected to procure knowledge or when the act is done; and of what species is the sin?

Per se, inasmuch as formal sin consists in doing wrong or neglecting duty with advertence, formal sin is committed when the doer of a bad action, which is the result of voluntary ignorance, culpably neglects to procure the requisite knowledge. At the time when the bad action is done through ignorance the doer of it does not advert to the wrong that he is doing, and so the act can not be a formal sin at the time when it is done. Of course if the bad act is not merely the result of ignorance, but at the time when it is done there is some suspicion of its not being right, or some advertence to

its malice, then the harm done will not only be voluntary in its cause, but also voluntary in itself. But then it will not be done out of voluntary ignorance, but out of malice here and now.

A sin of ignorance is of the same species as the act done out of ignorance would be if it were committed with knowledge. For the law which is violated by the sin is violated also by voluntary ignorance concerning it, inasmuch as every law imposes on those who are subject to it the obligation of obtaining knowledge of it, and voluntary ignorance is a violation of this obligation.

3. Albert neglected his work when he was a medical student. In spite of warnings from professors and parents he gave a great deal of time to enjoyment. In each examination he managed to show sufficient knowledge to pass, though there were some subjects of which he was ignorant. When he began to practise, he soon found out his deficiencies. His prescriptions often seemed to do harm to his patients instead of good. After some months he became so uneasy that he spoke on the subject to his confessor and asked him what he was to do. After satisfying himself that there are good grounds for Albert's scruples the confessor should tell him that he must give some time to study now, so as to make up for his idleness in his student days. He knows what subjects he neglected, and he should apply himself to those in the first place. Until he can make up for lost time he should not undertake cases where his ignorance is likely to be an obstacle to his treating them properly. On one pretext or another he may call in some other medical man, and forego his own fees in such cases. If he does what he can in this way, he need not give up his practice, as all serious danger of doing harm will be removed, and he will soon gain the knowledge without which he should not have begun to practise at all. He committed sin in neglecting his studies, and as the matter was serious, nothing less than the lives and health of his patients, and the negligence was apparently grave, the sin was a grave one. He must be sorry for this and resolve to make up for it as far as he can in the future and then he may be absolved.

Case 3. Motions of Concupiscence

Philip, a seventeen-year-old student in a certain Catholic college, confesses before his confessor that he has suffered depraved motions. The confessor asks whether he consented to them, which Philip denies. Then, when the confessor asks whether perhaps he has posited a cause of them and what cause, he replies that sometimes they arise as if spontaneously, sometimes from the reading of books, sometimes from association with other boys toward whom perhaps he cherishes a carnal affection, and sometimes from the fact that he has kissed them. Hence it is asked:

1. What is concupiscence?
2. Can any order of the acts by which sin is usually committed be distinguished?
3. Is there sin in the motions which are called first-first and second-first?
4. What is to be said concerning the case, and what counsel is to be given to Philip concerning each point?

SOLUTION

1. What is concupiscence?

Concupiscence is commonly used in different senses by dogmatic and by moral theologians. Dogmatic theologians use it to signify the inclination to evil and the inordinate motions which we all experience within us, and which, as the Council of Trent teaches, are the effects of original sin.¹ In moral theology concupiscence is used in a wider sense to signify any movement of passion, or any movement of the sensible appetite toward its own proper good. Thus it is a general term used to signify emotions of love, hatred, joy or gladness, desire, sorrow, and anger. Such emotions are not in themselves either good or evil; their moral quality depends on their object, on whether they are voluntary or not, and on whether they are duly moderated. Thus, regulated love of what is good is praiseworthy, love of what is evil is wrong and blameworthy.

¹ Sess. 5, Decree on Original Sin.

2. Can any order be traced in the acts by which sin is usually committed?

Yes, the first promptings of sin usually come through the senses. I see a beautiful piece of jewelry; by its beauty and luster it naturally attracts me. I can not help feeling this impulse; it is the necessary movement of the appetite toward an object which promises satisfaction. It is the *motus primo-primus* of the moralists. When such an emotion is excited, it attracts the notice of the intellect. The intellect begins to consider whether the incipient desire for the jewelry is right or wrong. If I have money to buy it and am willing to pay the price, the intellect sees nothing in the series of acts which conscience can condemn. But if I have not the money or I have no intention of parting with it, then it behooves me to put a curb on my desire. No harm is done if it stops at a mere velleity — “I should like to have that pretty thing if I could afford it.” But such an imperfect desire if not kept under control is apt to issue in a definite purpose — “I like that and I will have it, by theft if need be.” In this deliberate act

of the will sin is first committed; the seeking for means and opportunity and the actual execution of the purpose only belonging to the accidental perfection of the sinful act.

3. Is there any sin in the movements of the sensible appetite called by theologians *primo-primi* and *secundo-primi*?

Those movements which are called *primo-primi* are antecedent to the exercise of the deliberative reason and therefore are not free, and so can not be sinful. Those called *secundo-primi* follow upon imperfect advertence to the morality of the movement in question, and so if the object or circumstances are bad, the movement will be bad also, and inasmuch as to some extent it is voluntary and free, to that extent it will be imputable to the agent. However, as the act is imperfect, and for mortal sin a perfect and consummated act is required, a *secundo-primus* movement can not be mortally sinful.

4. Philip, a boy of seventeen, confesses that he has had movements of impurity. His confessor asks him whether he consented to them, and he answers "No." Then the confessor asks him whether he caused them, and the boy answers that sometimes they arose spontaneously, sometimes from reading novels, sometimes from talking with other boys for whom he entertains a feeling of softness, and occasionally he has kissed these. The confessor should tell Philip to pay no attention to the impure movements which arise spontaneously, and to turn his mind away from them by thinking of something else. If the novels are lascivious and obscene, Philip commits a grave sin by reading them, inasmuch as he voluntarily and without justification puts the cause of strong temptations to impurity which will frequently be the cause of sin. If Philip has any such books, he should destroy them. If they are not lascivious, there will not be grave sin in reading them, and they may be permitted even to young people like Philip in moderation, for the sake of cultivating the imagination and style, and gaining a knowledge of literature. The confessor, however, should warn his penitent against wasting too much time in such reading and against the dangers which frequently arise from it.

Philip should be told not to touch, fondle, much less to kiss the boys for whom he feels a sensual attraction. If such acts on his part have not hitherto led to grave disorder and sin, they will certainly do so before long. By such conduct he is developing passions which are very difficult to keep in order. He should be told to act in a manly and Christian manner towards his companions, and to treat them with respect — Great reverence is owed to a boy.

Case 4. Principle of a Double Effect

Certain more recent authors reject the principle of a double effect on the ground that it contains a begging of the question; for the first condition which the said principle establishes for the lawfulness of an action requires that the cause be good or at least indifferent; secondly, because it requires that the bad effect not be intended, although intention cannot change the nature of the external action and it is permissible to intend the killing of an unjust aggressor, to which example St. Thomas applies this principle; in this example the third condition also is lacking, namely, that the good effect not follow from the bad effect; finally, the fourth condition, namely, that there be a proportionate cause, is indeed true, but according to them it is useless in practice and incapable of application.¹ Hence it is asked:

¹ Ita fere Dr. W. McDonald, *The Principles of Moral Science*, p. 149.

1. What is the principle of a double effect, and for what does it serve?
2. Is the said principle true?
3. What is to be said about the objections recited?

SOLUTION

1. What is the principle of the double effect, and of what use is it?

The first part of this question may be answered in the words of Dr. McDonald's own rendering of Lehmkuhl: "It is lawful to perform an action which produces two effects, one good, the other bad, provided (1) the action, viewed in itself, is good or at least indifferent; (2) the agent does not intend the evil effect, but only the good (it is well to add in some cases, and provided there is no danger of subsequent evil consent or intention); (3) the good effect is produced as immediately as — that is, not by means of — the bad; (4) and there is a sufficiently weighty reason for permitting the evil effect."

The use of this principle often enables us to decide whether we are bound to abstain from some action because of its producing evil effects. If the action in question has nothing but evil effects, then of course it is itself wrong. But sometimes an action has both evil and good effects. Thus if I dig a well in my own land, I may obtain a supply of water, but this good effect may be accompanied by serious loss to my neighbor if my well dries up his water-supply. The question frequently arises whether or not the evil effect (in this example loss caused to my neighbor) makes the action (digging the well) wrong. The principle enunciated above lays down the conditions under which the action in question may be done, in spite of its producing evil effects.

2. Is the principle true?

Yes; it has the support of St. Thomas (I-II, question 64, article 7) and of most recent moralists. It may be proved also from the fact that when the conditions laid down are fulfilled, there is nothing wrong either in the object or in the circumstances of the action in question, and so it may be done,

for we may do anything that has nothing wrong in it. The fact that the evil effect follows does not under the supposed conditions make the action wrong; we exercise our right, and regret that this can not be done without some evil consequences which we do not desire, but only permit.

3. What is to be said about the objections mentioned in the case?

The first condition laid down in the principle is that the action viewed in itself must not be bad; but, says the objection, is not this the whole question at issue? No, it is not; there is no begging of the question in the principle. The morality of digging the well when it causes damage to my neighbor is in question, and the principle requires that this action of digging the well apart from the evil effect of causing damage to my neighbor should not be wrong in itself. If without the leave of the owner I proceed to dig a well in the property of my neighbor, the action in itself would be wrong; its malice would be at once apparent, it does not fulfil the first condition. But I have a right to dig a well in my own property, and so the first condition is fulfilled in the given example.

The second objection is that the question of intention does not arise, inasmuch as the intention can not change the nature of the external act. It is true that the intention can not change the physical nature of the external act, but it can change its moral quality. If I dig the well in my property to spite my neighbor and to deprive him of his water-supply, I commit a sin against charity, though the uncharitable intention does not change the physical nature of the external action so as to cause it to be against justice. The question of intention is therefore of importance. We need not here enter into the disputed question as to whether in self-defence one may intend to kill an unjust aggressor, or whether the intention should be exclusively directed to self-defence.

The third objection is that in killing an unjust aggressor in self-defence, to which St. Thomas applies the principle of the double effect, the good effect (the preservation of one's own life) follows from the evil effect (the killing of the aggressor). In reply it may be said that even if this be conceded, it would only follow that the principle is wrongly applied to this case; it would not follow that the principle is false or useless. But according to the mind of St. Thomas the killing of the aggressor does not follow from the act of self-defence, but both killing and self-defence follow immediately from the blow or wound inflicted. The distinction is subtle and not of great practical importance.

The fourth condition, that there should be a sufficiently weighty reason, is not useless nor incapable of being applied, as the last objection asserts. For charity requires that I should not seek a trivial advantage of my own at the cost of serious loss to my neighbor. If I can very well do without a new water-supply, I may not dig a well in my property which would ruin my neighbor by depriving him of the only water-supply available to carry on his business. On the contrary, if a new supply is as necessary for me as it is for him, charity does not require that I should forego my own advantage lest I should deprive my neighbor of an equal advantage. Charity does not bind with so serious an inconvenience.

Case 5. Voluntary Per Accidens

Titus, a young man, confesses that he is accustomed rather often to suffer a seminal emission when he rides horseback. When asked by the confessor whether he has given consent to the depraved pleasure, he denies it; and when asked again whether he rides horseback in order to procure those motions, at first he absolutely denies it, and says that he rides rather because that exercise pleases him greatly. But afterward, correcting himself, he says that he is not certain; perhaps because of the said effect he chooses that mode of exercise somewhat more readily. The confessor, however, having heard these things, doubts whether he ought to forbid Titus horseback riding or not. Hence it is asked:

1. What is voluntary in itself and in its cause, and when is this imputed to the agent as fault?
2. Is an effect seriously bad, voluntary only in its cause, always a mortal sin?
3. What is to be said concerning the case?

SOLUTION

1. What is meant by voluntary in itself and voluntary in its cause, and when is the latter imputed as sin to the agent?

That is voluntary in itself which is willed in itself and which is not merely foreseen to follow from something else which is willed in itself. On the other hand, that is voluntary in its cause which is not willed in itself although it is foreseen that it will follow from something that is willed in itself.

That which is voluntary in its cause is imputable to the agent if it was foreseen, if it could be avoided, and if there was an obligation to avoid putting the action precisely because it produced the effect in question.¹

¹ *Manual of Moral Theology*, vol. i, p. 24.

2. Is a seriously bad effect which is only voluntary in the cause always imputable to the agent as a grave sin?

No; for no evil is imputable unless it is voluntary, and evil which is only voluntary in the cause, though it would be grave if it were willed in itself, will not necessarily be grave if it is only voluntary in its cause. For this cause may be only slightly wrong, or only slightly connected with the evil effect, and then the amount of voluntariness in the effect is only slight, and can not be more than a venial sin. If the evil only follows by accident from what is voluntary in itself, it can not be truly said to be voluntary at all, and unless there is some extrinsic reason, such as the necessity of avoiding injury to others or the necessity of obeying a lawful superior, it will not prevent a useful or otherwise licit action being performed lawfully.²

² *Ibid.*

3. Concerning the case. The confessor neither ought nor is able to forbid horseback riding to Titus in this case. For although he rather often suffers a seminal emission from it, nevertheless he does not give consent to this bad effect, nor is the effect voluntary in itself or in its cause, because it does not follow of itself from horseback riding but only by accident. For horseback riding contains in itself nothing unlawful or lascivious in the genus of lust, nor by reason of harm to another is he bound specially to guard against such an effect. Hence it is lawful for Titus to ride horseback, and he should be advised to cast aside every thought and fear of that bad effect, for bad motions sometimes arise from that rather than from any honorable action.¹

¹ Cf. St. Alphonsus, lib. iii, nn. 483, 484.

Case 6. Voluntary in the Cause

Titius, a Catholic, gets himself drunk not rarely; and since for that reason he rather frequently omits hearing Mass on Sunday, and indeed, while drunk, beats his wife, although, when his reason has been recovered, on hearing this he grieves greatly; and since his son, having seized the occasion of his father's drunkenness, not only omits hearing the commanded Mass but spends the whole Sunday in revelries and games with dissolute companions, Titius, being about to confess, consequently doubts what and in what manner he is bound to confess. Hence it is asked:

1. What sort of sin is drunkenness, and in what does its malice consist?
2. Are the sins of children imputed to their parents?
3. What is to be said concerning the case?

SOLUTION

1. What sort of a sin is drunkenness, and in what does its malice consist?

St. Paul enumerates¹ drunkenness among the sins which prevent those who commit them from entering the kingdom of God, and so it is a mortal sin. This should be understood of complete drunkenness, which deprives one of the use of reason, so that he does not know what he is doing and can not distinguish between right and wrong. Partial drunkenness is only a venial sin, unless by reason of scandal or harm done to health or fortune, or some similar extrinsic reason, it becomes a grievous sin.

¹ Gal. v. 21.

The malice of drunkenness does not consist merely in voluntarily depriving oneself of reason, for we may do that for a good cause, as we do when we take chloroform. Its malice consists in depriving oneself of the faculty of reason without good cause by yielding to an inordinate appetite for intoxicating drink. Drunkenness not only deprives one of the use of reason but also of the capacity to recover it for a considerable time.

2. Are the sins of children imputable to their parents?

Yes, certainly. "Parents sin gravely if, insofar as it lies in them, they do not take care that their children be imbued with good morals . . . avoid the company of the wicked, observe the commandments of God and the Church, frequent the sacraments, and abstain from sins."¹

¹ Busembaum apud St. Alphonsus, lib. iii, n. 339.

3. Titius committed grave sin every time he got completely drunk so that he did not know what he was doing. We must suppose that he foresaw that he would not be able to hear Mass on the following Sunday when he got drunk, and so he is guilty of mortal sin on this account also. If he knew that he usually beat his wife when he got drunk, he committed sin also on this account, even though he was sorry afterward; his sorrow should have prevented him from

getting drunk. If his son was of age to be corrected and compelled to go to Mass and avoid bad company, Titius was obliged to see to this, and he committed grave sin by neglecting his duty and by giving bad example to his son. The sin which he commits is against his obligation as a parent, and the sins of his son are imputable to him under this head; not that the father is guilty of the specific sins committed by his son on account of the father's neglect. Titius, then, must confess these sins with the number of times that he has been guilty of them.

Case 7. The Method of Moral Theology

Titius, a priest, reads in a certain periodical an article written by another young priest concerning the method of moral theology, in which, among other things, the following are put forward: "Much is lacking in the textbooks which are in circulation, for they touch only one part of present-day life; they treat sins, whereas the duties of men in private and social life ought to be treated; the method is not scientific, since individual questions are proposed to which different answers are often given, so many dissenting authors being cited that it truly produces skepticism. In place of this casuistical method, a manner adapted to modern science is to be followed, so that a solid foundation is first laid, namely: that to be ethically evil which produces evil effects; then, an analysis of human acts having been instituted and history also having been adduced, it is possible to rise to general principles scientifically certain and verified." It seems to Titius that a method approved by the experience of so many centuries in the Church is not deserving of such censure; nevertheless, he is troubled and does not know what is to be answered. Hence it is asked:

1. What is moral theology?
2. What is to be said about the opinions of the anonymous writer?

SOLUTION

1. What is Moral Theology?

Moral Theology is defined by Fr. Buceroni: That part of theology which, resting upon divine law manifested through revelation, investigates what is lawful and what is unlawful in human actions, in order to direct these toward eternal life.¹ Moral Theology, then, takes its principles from revelation, and because they rest on revelation they have a more secure and certain foundation than human reason could afford. But moral theology does not cover the whole field of Christian conduct. Its object is not to place high ideals of virtue before the people and train them in Christian perfection. Its task is much more restricted and humble. It lays down rules for determining what is right and what is wrong according to the teaching of the Christian faith. Its primary object is to teach the priest how to distinguish what is sinful from what is lawful, so that he may fruitfully administer the sacrament of Penance and perform the other duties of his sacred ministry. It is not intended for edification, nor for the building up of character, nor, it may be added, is it intended to teach people how to shake off the burden of the moral law, or to minimize its obligations.

¹ *Instit. Theol. Mor.*, vol. i, n. 1.

2. What is to be said about the opinions of the anonymous writer?

The perfect text-book of moral theology has not yet indeed been written, if it is ever destined to be written. It certainly could not be written on the lines laid down by the anonymous critic. Outside the Catholic Church there is a tendency to regard moral problems from the point of view of evolution, and from the purely naturalistic standpoint. The critic seems to have been reading some modern author of this school, and to have become infected with his spirit. While we remain Christians it

would be foolish and disastrous to abandon our secure position in order to adopt the constantly changing systems of our adversaries. We have seen why sin is so prominent in our text-books, but we may add here that in deciding what is sinful we are also virtually laying down duties, for sin is only a violation of duty. The method of moral theology is strictly scientific, but it proceeds by way of deduction from principles which rest on revelation, not by way of induction. The varying answers given in the books to particular questions do not concern moral principles, but their application to particular cases. In these questions it is often impossible to reach any certain conclusion, and so, perforce, different opinions have to be acknowledged, but this does not produce skepticism. We hold fast the truth, but we know the limits of our knowledge, and we know how to arrive at a practical decision when there is a conflict of opinions.

The foundation which the critic proposes for the science of morals is by no means solid. Consideration of the effects of an action often enables us to decide its moral quality, and the ordinary text-books do not neglect this consideration. But much depends upon what we mean by the effects of an action. Evolutionary ethics restricts its attention to the temporal effects of the present life, and those effects are often so subtle, and yet so far-reaching, that it is very difficult to estimate them at their proper value. Even if this could be done, this evolutionary criterion upsets the whole perspective of moral guilt. Judged by their temporal evil effects, how should we classify in the order of guilt (a) the theft of five shillings, (b) indulgence in an immodest thought, (c) the denial of the goodness of God, and (d) an unkind speech to one's neighbor? We do not know all the bad effects of sin, but among them we must assuredly reckon the displeasure of Almighty God, the loss of heaven, and the sufferings of purgatory and hell. In our estimate of evils we shall go very much astray if we leave the chief of all out of account.

We may and should make use of history in moral theology, especially where positive law is concerned; but with the Catholic theologian it will not occupy the all-important position that it holds in the evolutionary science of ethics.

Most of the teachings of Catholic morality have been sufficiently verified by the experience of twenty centuries. But as they rest on faith, and faith is the conviction of things that appear not, we shall not be able to verify them fully in this life, and to claim the right to do it is virtually to abandon a life of faith, and seek to live by knowledge, which one can not do and remain a Christian.

Case 8. On Referring One's Actions to God

Gregory, a priest, in a certain catechetical instruction, in order to show the excellence of charity toward God, asserts that the goodness and merit of every human action flow from charity. For actions to be good without qualification, they must be directed to God by an actual or virtual intention, according to the precept of the Apostle: "Whether you eat or drink, or do anything else, do all things for the glory of God"; "Let all your things be done in charity"; and therefore they must proceed from a beginning of charity. Moreover, in order that the actions of a just man may be meritorious in strict justice, he says that they must be performed from an act of charity, at least virtually, so that, if you ask someone why he acts, he can immediately answer: "For the pleasure and glory of God." Having heard these things, Liberius, a priest, contends that this doctrine smacks of the errors of the Jansenists, asserting that the words of the Apostle contain only a counsel, and that actions do not have to be referred virtually to the glory of God in order to be good; otherwise unbelievers, who neither think about God nor acknowledge Him, would always sin when acting, which has been condemned by the Church. He further contends that, for merit in strict justice, it is sufficient that a morally good work be performed by a man established in the state of grace. Hence it is asked:

1. Must every act be referred to God in order to be good?
2. In order that acts may be meritorious in strict justice, is the influence of charity required in such a way that they must proceed from it either actually or virtually? And, insofar as the answer is affirmative, how is that "virtually" to be understood?

SOLUTION

1. Ought every act to be referred to God, in order that it may be morally good ?

Theologians agree that every action in order to be morally good must be referred to God, our ultimate end, in some way. The Jansenists said that this reference to God must be explicit, for the Apostle says: "Whether you eat or drink or whatsoever else you do, do all to the glory of God."¹ The common opinion of Catholic theologians is that an implicit or virtual reference to God is sufficient, which consists in this, that the agent apprehends that the action is in accordance with right reason, or is not sinful, and that at stated times he refers himself and all that he is and does to God.²

¹ 1 Cor. x. 31.

² Tepe, *Instit. Theol. Mor.*, vol. i, n. 96.

2. In order that an action may be meritorious in strict justice must it proceed actually or virtually from charity, and if virtually, how is this to be understood?

This is a disputed point among theologians. Some think with Suarez that it is enough if an action is done out of any supernatural motive for it to be meritorious in strict justice if the other conditions are verified. Thomists require that an action should proceed from charity in order to be meritorious in strict justice. But in requiring the influx of charity they only require that the agent should be in the state of grace, and that at the proper time he should have referred himself and all that he does to God

by an act of charity. How often that act of charity must be elicited they do not accurately define. If these conditions be fulfilled, the act proceeds virtually from charity, even though the agent does not expressly think of God.¹

¹ Tanquerey, *Synop. Theol. Mor.*, vol. ii, n. 203.

It follows from what has been said that in general Gregory is right according to the opinion of the Thomists. But he should not propose a theological opinion as if it were Catholic doctrine, and he should be careful not to exaggerate, for there is some slight exaggeration in that he says that if the agent is asked why he does something, he should be able to answer at once, "For God's honor and glory." On the contrary, according to the Thomist opinion, any honest motive will be sufficient for merit in one who is in the state of grace, for the action will then proceed virtually from charity.

Liberius was wrong in saying that Gregory's teaching was Jansenistic, for he expressly stated that a virtual reference to God is sufficient. In holding that the words of the Apostle contain only a counsel Liberius followed the opinion of St. Bonaventure and many others. Much depends on what he meant by virtually, but if he denied that our actions must be virtually referred to God in the sense that the agent must apprehend that they are according to right reason, and thus referable to our last end, he was wrong. Nor does it follow from this that the actions of those who do not think of God are sinful, for if they apprehend them as good and intend them as such, they virtually refer them to God. In asserting that it is sufficient for merit that an action should be done by one who is in the state of grace, he follows St. Thomas and many others, but to complete the theory he should mention the influx of the act of charity which must be elicited at the proper time; otherwise the state of grace will be lost, inasmuch as a grave precept has not been fulfilled.

Case 9. Morality Not in the External Act

Titius and Caius, priests, sometimes converse about matters pertaining to morals. One day they enter into a conversation about the subject in which the morality of human acts resides. “I venerate,” says Caius, “the practice of the Church, for, as the Angelic Doctor says, ‘The custom of the Church has the greatest authority and is always to be emulated in all things, because even the doctrine of Catholic doctors has authority from the Church’ (II-II, question 10, article 12). Nevertheless, I have never been able to understand the necessity of confessing the external act of sin; rather, it seems to me that it ought to suffice to confess the internal act, because the malice of sin is from the will, and the species of the internal and external sin is the same: ‘Everyone who has looked at a woman to lust after her has already committed adultery with her in his heart.’” Titius admits that he has the same difficulty, increased by the fact that, according to several doctors, the effect of a sin does not have to be confessed, although it would seem that the effect, as at least voluntary in its cause, should be confessed rather than the external act. It is asked:

1. Is the morality of human acts in the internal act or in the external act?
2. How do the effect of a sin and the external act of sin differ?
3. How are the difficulties of Caius and Titius to be answered?

SOLUTION

1. Is the morality of human acts in the internal or in the external action?

The morality of human acts, or their goodness and badness, is there where freedom resides, for it is only because an action is freely produced by the agent that it is imputable to him. Freedom, however, is formally and strictly only in the will, and an external act is only called free inasmuch as it proceeds from a free will.

2. How do the effect of a sin and the external act of sin differ ?

Three stages may be distinguished in a bad action, as, for example, murder. First of all there is the deliberate purpose to commit the crime; then the blow is struck; finally, perhaps after an interval of some days or weeks, death ensues. The internal and the external act, or the purpose and the blow, form together one complete human action, of which the formal part is the purpose and the blow is the material. From this complete human act we must distinguish its effect which follows after some time, as we here suppose for the sake of clearness. The effect is due to a free exercise of will, and is therefore imputable to the agent, but it is not a human act; it is the consequence of a human act.

3. What is to be said in answer to the difficulties of Caius and Titius? Caius does not see the reason why the external act should be confessed if the malice of sin is in the internal act of the will. Caius confounds two different things — sin and the malice of sin. The malice of a purpose to commit murder is the same as that of actual murder, but a purpose is an internal act and actual murder is a complete human act made up of the internal and of the external act of

execution of the purpose. They are, then, two different human acts, and therefore they are two different sins; for sin is a bad human act, and so one must not be confessed for the other.

Titius has the same difficulty, and in his case it is increased because many theologians allow that the effect of a sin need not be confessed, although it is voluntary in its cause. In answer to this it may be said that the effect of a sin is not itself sin, and only sins need be confessed. On the contrary, an inordinate external act is a sin, for sin is any word, deed, or desire against the law of God. The effect of an action may follow while he who put its cause is asleep, and a man can not commit sin while he is asleep. The effect might even follow after the death of the person who caused it, and certainly a man can not commit sin when he is dead.¹

¹ Cf. Lugo, *De Poenitentia*, disp. 16, sec. 9.

Conscience

Case 1. The Authority of Conscience

To Titius, who applies himself to the study of moral theology, theologians seem to speak with little consistency about the obligation of following conscience and the obligation of submitting one's own judgment to the judgment of the Church. For they say that conscience is the voice of God, the herald of God, and that a man is bound to follow conscience whether it is right or erroneous. Indeed, Cardinal Newman has these words: "That divine authority, the voice of conscience, on which in truth the Church herself is built. . . . Did the Pope speak against conscience he would commit a suicidal act. He would be cutting the ground from under his feet."¹ Hence a certain modernist says: "When authority is dumb or stultifies itself, private conviction resumes its previous rights and liberties. It sent us to authority in the first instance, not by a suicidal self-contradictory act; but in basing our trust upon reasons and sentiments it thereby assigned a limit to that trust which is reached as soon as authority would seem to violate those reasons or sentiments."² And another writer says: "To our own mental and moral conscience all doctrines and laws must make their last appeal, and we have a distinct as well as a corporate personality."¹ But, if this doctrine is admitted, Titius does not see what is to be condemned in the Protestant theory of private judgment. Hence it is asked:

¹ *Letter to the Duke of Norfolk*, p. 60.

² G. Tyrrell, *A Much-abused Letter*, p. 57. This was a fundamental point in the late Fr. Tyrrell's teaching. He developed that teaching more fully in the last essay published in his book entitled *Through Scylla and Charybdis*. The following extracts are taken from that essay.

¹ M. D. Petre, *Catholicism and Independence*, p. xi.

1. What is a norm of morality, and what is the norm of morality?

"We have long since not merely resigned ourselves to a silent and a hidden God, but have come to recognize our seeming loss as a priceless gain. For now we have learned to seek Him where alone He is to be found, and seen, and heard; near and not far; within and not without; in the very heart of His creation, in the center of man's spirit; in the life of each; still more in the life of all. It is from the Sinai of Conscience (individual and collective) that He thunders forth His commandments and judgments; it is from the heights of His holiness that He looks down in pity upon our earthliness and sinfulness; it is in His Christ, in His saints and prophets, that He becomes incarnate and manifest, and that He tabernacles with the children of men."

"Thus it is in the widest, the most enduring, the most independent consensus that we possess the fullest available manifestation of that divine spirit, partially and imperfectly manifested in our own individual mind and conscience—the spirit of Truth and Righteousness, the source of all moral power and authority—God revealed in man. Authority, then, is not an external influence streaming down from heaven like a sunbeam through a cleft in the clouds and with a finger of light singling out God's arbitrarily chosen delegates from the multitude, over and apart from which they are to stand as His vicegerents. Authority is something inherent in, and inalienable from, that multitude itself; it is the moral coerciveness of the Divine Spirit of Truth and Righteousness immanent in the whole, dominant over its several parts and members; it is the imperativeness of the collective conscience."

In an article contributed to the *Hibbert Journal*, January 1910, Baron F. von Hügel wrote concerning this doctrine of Fr. Tyrrell: “In substance he [Fr. Tyrrell] was maintaining, as to the Popes’ powers, nothing but what Cardinal Bellarmine, the greatest of the anti-Protestant theologians, and what Cardinal Newman, so emphatically a lover of authority, teach concerning conscience and the Pope—the latter in his *Letter to the Duke of Norfolk*—backed by countless theologians, saints, and councils.”

2. Can a conflict arise between conscience and an infallible judgment of the Church?
3. In the case of a real conflict between conscience and the Pope, which would have to be obeyed?
4. What is to be said concerning the difficulty of Titius?

SOLUTION

1. What is the norm of morality ?

Because we are free we can choose whether we will do good or evil. We ought to do good, but how are we to know what is good? There should be some rule or norm which tells us what is good and what is evil. Catholic theologians agree that the proximate and subjective norm of morality is conscience, or a practical judgment of the reason which tells us that such a particular action must or may be done or omitted. Conscience applies the objective norm of morality which is law, and all law is based on the eternal law of God, which bids us observe right order and forbids us to violate it.

2. Can a conflict arise between conscience and an infallible decision of the Church?

No, this is not possible. For an infallible decision of the Church has for its subject-matter some truth of the faith or some rule of morality, whereas conscience is only concerned with the application of general rules to a particular action which I am contemplating here and now. The field of infallible decisions and that of conscience are different, and they can no more come into collision with each other than can two trains on different lines. It is true that conscience may conflict with a particular command of a Pope, but the Pope is not infallible when he gives a particular command.

3. In case of a conflict between the Pope and conscience, which must be obeyed?

All Catholic theologians agree that in case of a real conflict when a certain conscience tells me that what a superior commands is wrong, I must obey conscience and disobey the superior, whoever he may be.¹ Of course before disobeying the command of a lawful superior in such a case I must make sure of my ground. I must use all available sources of information so that I may be sure that my conscience is right and not erroneous. If this is done, conflicts between the Pope and the individual conscience will very seldom occur.

¹ St. Thomas, *De Veritate*, q. 17, a. 5.

4. What is to be said about the difficulty of Titius?

From what has already been said it will be clear that theologians by no means contradict themselves when they teach that conscience is the voice of God and that it must be obeyed as such, and at the same time insist on the duty of submitting one’s own judgment to the authority of the Church.

Conscience is indeed private judgment, but its sphere is not that of ecclesiastical decisions. Private judgment is supreme when it tells me that this particular action must be done or not done. On the other hand the Pope is supreme for Catholics when he teaches from the chair that some doctrine belongs to Catholic faith or practice. Conscience says nothing about the truth or falsehood of such propositions as constitute the sphere of infallible decisions; it is restricted to questions whether this particular action which I am contemplating is to be done or not, and with this the Pope's infallible authority can not conflict. What Cardinal Newman said is true; if the Pope spoke against conscience, he would speak against God, from whom all his authority is derived, and thus he would cut the ground from under his feet. The modernist doctrine is pure Protestantism, inasmuch as it asserts that private judgment is the final court of appeal in matters of Catholic faith and practice, and not the Church. It is plain that the authority of Cardinal Newman can not be invoked for this Protestant theory.

Case 2. Probabilism Not Condemned

A recent author proves, as it seems to him, that probabilism is opposed to the judgment of the Church given by Alexander VII, Innocent XI, Innocent XII, and Clement XI, and indeed is opposed to reason, insofar as I must sincerely strive for the agreement of my action with the objective morality of that action—something I by no means accomplish when I choose a norm which, in my judgment, is more probably opposed to the aforesaid morality than in agreement with it. He thinks that by these arguments the system of probabilism has been demolished, but that it is still maintained because of men's inclination toward that which is easier and because of the great influence which the Society of Jesus has exercised upon theological science. Hence it is asked:

1. What is a system of moral theology, and how do probabilism and equiprobabilism differ?
2. What can be answered to the arguments of that recent author?
3. Can probabilism rightly be called the distinctive doctrine of the Society of Jesus?

SOLUTION

1. What is meant by a system of moral theology, and how does probabilism differ from equiprobabilism? By a system of moral theology is meant a body of rules which enables a person to form a certain conscience in cases of doubt where direct certainty as to the lawfulness of an action can not be had. Thus probabilism is that system of moral theology according to which it is lawful to follow a solidly probable opinion even against a more probable opinion in favor of the existence of a law which would forbid the action when the sole question is one about the lawfulness or unlawfulness of the action. Equiprobabilism only allows one to follow an opinion in favor of liberty against such a law when the opinion is equally or almost equally probable with that in favor of the law. Equiprobabilists also add to this a subsidiary rule to the effect that in case of doubt whether a law hitherto in force has ceased to be obligatory, it must be obeyed as long as it is not certain that it has ceased to be of obligation.

2. What answer may be given to the arguments of the recent author alluded to?¹

¹ L. Wouters, C.S.S.R., *De minusprobabilismo*.

The recent author alluded to confounds two very different things — the private opinion of a Pope, and a Pope's authoritative decision, which is the judgment of the Church. As Benedict XIV explains in his classical work *De Synodo Dioecessana*, the private opinion of a Pope has no more weight than that of another theologian of equal learning and virtue. It is only when he gives an authoritative decision — when he acts as Pope — that he expresses the judgment of the Church. It may be conceded that the Popes mentioned were, as theologians, adverse to probabilism, but they never condemned it authoritatively. Of all the proofs of his contention that the recent author adduces, the strongest, as he confesses, is the decree of Innocent XI, and we will give here the authentic version of that decree to show what it really prescribed.

Wednesday, 26 June 1680

“After Father Laurea had made a report of the contents of the letters of Father Thyrsus Gonzalez of the Society of Jesus directed to our Most Holy Lord, the Most Eminent Lords said that it should be written through the Secretary of State to the Apostolic Nuncio of Spain, so that he may signify to the said Father Thyrsus that His Holiness, having graciously received and read his letters not without praise, commanded that he freely and fearlessly preach, teach, and defend with the pen the more probable opinion, and likewise manfully attack the opinion of those who assert that, in a concurrence of a less probable opinion with a more probable one recognized and judged as such, it is lawful to follow the less probable; and that he should assure him that whatever he shall do and write in favor of the more probable opinion will be pleasing to His Holiness.

“It should be enjoined upon the Father General of the Society of Jesus, by order of His Holiness, that he not only permit the Fathers of the Society to write for the more probable opinion and to attack the opinion of those asserting that, in a concurrence of a less probable opinion with a more probable one recognized and judged as such, it is lawful to follow the less probable; but that he also write to all the Universities of the Society that it is the mind of His Holiness that each one, as he wishes, may freely write for the more probable opinion and attack the aforesaid contrary opinion; and that he command them to submit completely to the command of His Holiness.”¹

¹ Lehmkuhl, *Probabilism Vindicated*, p. 82.

There is obviously no condemnation of probabilism in this decree, neither is there any condemnation in the other documents alluded to by the recent writer.²

² Compare Lehmkuhl, at the cited place, p. 80 and following.

The recent author’s argument from reason is weaker than his argument from authority. It amounts to this. We are under the obligation of sincerely trying to make our actions agree with the objective rule of morality. Therefore we are under an obligation of following the more probable opinion. The antecedent of this argument is true when the objective rule of morality is known. If there is no known objective rule of morality which binds me in the case in point, I am left to my liberty. The consequent is false. It gratuitously supposes that the opinion which seems to the agent the more probable is more in accordance with the objective rule of morality. What seems more probable to one is often less probable to others, and even to the same person at another time. And even if we grant that a more probable opinion is more in accordance with the objective rule of morality, it does not make that rule certain. And a certain obligation can not arise from an uncertain law else the effect would surpass its cause.

3. Can probabilism be called with truth the peculiar doctrine of the Society of Jesus?

No, it can not. As Fr. Oliva, who was General of the Society when the decree of Innocent XI was issued, asserted, there is no prohibition in the Society against defending probabiliorism or any other recognized system of morals. The long list of authors who have taught probabilism which St. Alphonsus gives in his Dissertation published in 1755 contains names belonging to all schools of theology. Probabilism was first formulated by Medina, a Dominican, and its first chief defenders were also Dominicans.

Case 3. A New Method of Forming One's Conscience in Doubt

According to a certain recent author,¹ the question whether workmen may lawfully act according to a trade-union rule which is probably unjust can be resolved by comparing the injuries which would follow for the workmen if they did not act in that way with the injuries to the employers which would follow if they did act in that way. For it is lawful to choose the lesser of two evils.

¹ Dr. W. McDonald, *Principles of Moral Science*, p. 213.

Accordingly, a certain workmen's association forbids bricklayers to lay more than five hundred bricks daily, although they could easily lay seven hundred. If we suppose that the rule is probably unjust, and that a greater injury would come to the workmen than to the employers unless they obey the association, Titius, a priest, would like to know whether it is lawful for them to act according to the given rule recently established. Hence it is asked:

1. Is it always lawful to follow a probable opinion?
2. If it is not always lawful, how can probabilism be called a universal norm?
3. What is to be said concerning the case?

SOLUTION

1. Is it always allowed to follow a probable opinion?

No, it is only allowed to follow a probable opinion when the only question is whether the action be sinful or not. If there is also question of an end which must be gained, or a probability of infringing the certain right of another, or if reverence for a sacrament forbids one to expose it to the danger of being null and void by using a probable opinion, the use of a probable opinion in these circumstances is not lawful.

2. How, then, can probabilism be called a universal rule?

Probabilism is a universal rule for forming a certain conscience in cases where there is no certain law which forbids the action contemplated. But there is a certain law which forbids one to jeopardize the attainment of an end which must be gained. The law which makes the attainment of the end obligatory makes it also obligatory to use safe means, not merely probable means, to attain it. And so an Anglican who thinks that Anglicanism is probably the true form of Christianity is not justified in exposing his salvation to risk by remaining an Anglican. The certain - law of justice forbids me to do anything which will probably injure the undoubted right of another. Reverence for God and for sacred things forbids me to expose a sacrament to the probable danger of nullity without necessity, and then necessity does away with the irreverence.

3. What is to be said to the case?

The rule that we may choose the less of two evils is applicable where we are under the necessity of choosing one of them, as in perplexities of conscience. Thus if a priest remembers at the Canon when

saying Mass that he is not fasting, he may think that he will commit sin if he goes on by violating the law of the Church about fasting celebration, and also that he will sin if he breaks off the Mass to the scandal of the faithful and against the rubrics. He must either go on or stop. In such a perplexity sound morality teaches that he must choose the lesser evil. But if two courses of action are proposed to me, both wrong, and there is no necessity for me to adopt either, I must avoid both. Not only greater evil, but less evil also is to be avoided. The maxim that of two evils we must choose the less is inapplicable here. And so I must not violate the right of another in order to save myself from ruin. I could not lawfully steal five pounds from a millionaire even though it would save me from bankruptcy, while the loss would not be felt by him. The doctrine proposed in the case appears to offend against these principles of sound morality.

A bricklayers' union makes a new rule that no member must lay more than 500 bricks daily, though 700 could be laid easily. This rule is supposed here to be probably unjust, because by contract the bricklayers bind themselves to do a fair day's work. The employer has a certain right to a fair day's work; 500 bricks a day is probably not a fair day's work; and so the bricklayers do not fulfil the terms of their contract entered into before the new rule was made, and sin against justice. It is as if I paid a debt of five pounds with a bank-note which is probably forged. It will be no defence for the bricklayers to say that they will suffer more than the employer if they do not obey the rule laid down by the union. Even if this were conceded, it would not be lawful to injure the employer in order to save themselves from loss.

Case 4. An Erroneous Conscience

Caia confesses that she omitted a Mass of obligation. When asked by the confessor whether she omitted it through her own fault, however, she replies that she was ill and had not been permitted by the doctor to leave her room. The confessor clearly perceives that Caia objectively committed no sin, yet that she evidently thinks she sinned because she did not hear Mass on a day of obligation. Hence he is doubtful whether she sinned at least subjectively or not. From this it is asked:

1. What sort of conscience is required for acting honestly?
2. What is an erroneous conscience, and how does it bind?
3. What kind of sin is committed if someone acts against an erroneous conscience?
4. What is to be said concerning the case?

SOLUTION

1. What sort of a conscience is required in order to act honestly ?

Before doing anything the conscience of the agent must at least implicitly pass judgment on the morality of the action, so that the agent judges for certain that this action which he contemplates is allowable. Before many of our actions we are not perhaps conscious of forming such a moral judgment, nor is it necessary to do this explicitly, because we ordinarily act from habit; but whenever we act consciously, at any rate an implicit judgment concerning its morality precedes the putting of the action. That judgment must not be a doubting one, but certain at least with the subjective certainty which excludes all prudent doubt about the morality of the action. For all that is not of faith is sin.¹ In this text it is clear from the context that St. Paul understands by faith a conviction that the action is right; in other words, a certain conscience of its morality.

¹ Romans xiv. 23.

2. What is an erroneous conscience and how does it oblige?

An erroneous conscience is an erroneous judgment about the morality of an action; it decides that what is wrong is right, or what is right is wrong. As conscience is the subjective rule of conduct and we are bound to follow it, therefore we are bound to follow an erroneous conscience when it is certain and no wise doubtful. If we do not do this, we act against conscience and commit sin. It may be that we have an erroneous conscience on the point through our own fault, inasmuch as we did not care to instruct and educate it aright, or wilfully closed our eyes to the truth. If this was the case, the objective evil which we do through an erroneous conscience is voluntary in the cause and imputable to us, but at the time when it is done it is subjectively right as it is according to conscience.

3. What sort of a sin is committed by acting against an erroneous conscience ?

The sin committed in this case is of that species which it is supposed to belong to by the erroneous conscience. This follows from the fact that even an erroneous conscience is the rule and measure of subjective morality. The species and gravity of the sin are measured by the rule.

4. The case. "Caia confessed that she had omitted Mass on a day of obligation. She had been ill on the day and had been forbidden to go out by her doctor. Of course there was no objective sin, but did she commit sin by going against her erroneous conscience which judged wrongly that the omission was sinful? There was probably some confusion in Caia's mind; she can hardly have thought that she was committing sin by not hearing Mass when she could not go on account of illness and because the doctor forbade her to go. Even if she thought that she was committing sin, she nevertheless would not do so for want of liberty if she was physically too ill and weak to go. If she could physically go, and if she thought that she was bound to go, she committed a sin of violation of the precept of hearing Mass on account of her erroneous conscience.

Case 5. A Debt Probably Paid

Caius confessed to Titius, a new confessor, that he had paid a debt of five pounds sterling with doubtful money. Titius remembered that a similar case gives theologians occasion for dispute, but, since he did not retain the certain solution in his memory, he asked Caius to return to him the following week. Meanwhile, he proposed the question for solution to two fellow priests. The first replied that a certain obligation cannot be fulfilled by an uncertain payment, and therefore the whole debt must be paid again. The other, however, replied that, since payment was probably made, nothing remained to be done. Titius, therefore, still doubtful about the answer to be given to Caius, asks:

1. In what does the principal difference between probabilism and equiprobabilism consist?
2. Is it lawful to use probabilism where there is question of probable injury to another?
3. How can probabilism be called a universal rule for forming conscience when it cannot be applied to many cases?
4. What is to be said concerning the case?

SOLUTION

1. What is the chief difference between probabilism and equiprobabilism? In spite of theoretical differences on the question of the chief formula employed to form a conscience in case of uncertain and conflicting opinions about the lawfulness of an action, in practice there is virtual agreement between moderate probabilists and equiprobabilists on the main point. This is seen in the doctrine and practical solutions which are common to both schools. However, there is a difference of some importance between them on a subsidiary rule. When it is solidly probable that a law has ceased to bind, either because it is probably abrogated or because it has probably been complied with, probabilists deny that any obligation remains in such circumstances. On the other hand equiprobabilists affirm that the obligation remains until it has been complied with for certain, or at least until it is certainly more probable that it has been complied with. They admit that St. Alphonsus followed other probabilists in this question in the earlier editions of his "Moral Theology," but they assert that he afterward changed his opinion. The chief reason alleged for their doctrine by equiprobabilists is the principle of possession — in doubt the condition of him who is in possession is the stronger. Therefore, they conclude, when it is not practically certain that the law has been complied with, inasmuch as it is in possession, the obligation still remains. Probabilists deny that the law can be said to be in possession when there is a solidly probable opinion that it has been complied with or has ceased to exist. In order that the principle of possession may be applied the possession must be a certain fact, and it is not a certain fact if it has probably ceased. Furthermore, the principle is applicable in its proper sense to a case of negative doubt, and when there is a probable opinion against the obligation, it is not a case of merely negative doubt.
2. See the answer to this question, p. 54.

3. See the answer to this question, p. 55.
4. The case. Caius confesses to Titius his confessor that he has paid a debt of five pounds with money which was probably false. In doing this he committed a sin against justice, and he should repent of it. As there was a probability that the money paid was false, it was not worth five pounds, and so Caius did not pay his debt in full. But now, on the other hand, it is probable that the debt has been paid; has Caius any further obligation of making restitution? The creditor has not any certain right to further payment; he has by hypothesis probably received payment in full, and thus no certain obligation rests on Caius of making further restitution. He committed sin in exposing himself to the probable danger of injuring his neighbor, but as it is not certain that any injury was in fact inflicted on his neighbor, Caius is not now bound to make restitution.¹

¹ St. Alphonsus, book iii, p. 562.

Case 6. A Conflict of Opinion

Cecilia confesses to Titius, her confessor, various grave sins against the sixth commandment. After making inquiries, he finds that she is in a proximate occasion of sinning against that commandment. When Titius asks whether she can leave that occasion, Cecilia replies that another confessor said that she was not bound to do so, since it is a necessary occasion. After further inquiries, Titius judges this opinion to be altogether false, and that Cecilia can leave that occasion with some inconvenience indeed, but not with grave inconvenience. Nevertheless, he does not know whether he ought to impose the obligation of leaving it, since there is a contrary judgment of another confessor. Hence he asks:

1. Can a penitent with a safe conscience follow the judgment of a confessor?
2. Can a confessor permit a penitent to follow an opinion which the penitent believes probable, but which the confessor judges false?
3. What is to be said concerning the case?

SOLUTION

1. May a penitent follow the opinion and direction of his confessor with a safe conscience?

Yes; in general in a case of doubt the penitent may follow the advice of his confessor whom he has reason to believe is a good and prudent man. By consulting his confessor where he can not form his conscience for himself he takes the ordinary means to resolve his doubts. Just as a man consults his lawyer on a point of law and abides usually by his decision, so on a point of morals a penitent is justified in abiding by the advice of his confessor who is presumed to be an expert in matters of Christian morality. Of course exceptions may occur. The penitent may be a well-instructed Catholic and the confessor may be a poorly instructed priest, and it may be that the penitent sees good ground for distrusting the confessor's opinion on some point; in that case the penitent must follow his own conscience, for his own conscience is his guide in conduct, not that of his confessor.

2. May a confessor permit a penitent to follow an opinion which the penitent thinks probable, but which the confessor thinks is false?

Here we must distinguish. If the opinion in question is recognized as probable by theologians of note, and the penitent wishes to follow their opinion, he has a perfect right to do so, and the confessor has no authority to prevent him. The confessor is a judge of sins and of the dispositions of his penitent, not of theological opinions. If, however, the opinion in question is not recognized as probable by theologians, but is only thought to be so by another confessor and the penitent; and the confessor whose absolution the penitent desires holds it as certain that the opinion is false, the confessor who thinks this can not allow the penitent to follow the opinion in question. For although the confessor is not a judge of theological opinions, yet he is a judge as to whether his penitent is being deceived or not by a false and dangerous delusion.¹

¹ St. Alphonsus, book vi, no. 604.

3. The case. Titius finds out from her confession that his penitent Cicily is in a proximate occasion of committing sins against the sixth commandment. Titius asks whether she can avoid the occasion, and she answers that another confessor told her that she was not bound to avoid it as it was necessary. After putting other questions Titius comes to the conclusion that that opinion is altogether false, as in his judgment Cicily can avoid the occasion with some but not great inconvenience. However, he does not know whether he can and should impose this obligation on his penitent. We answer that he should. By hearing Cicily's confession he accepts the responsibility of directing her, and in his opinion she is under the obligation of avoiding the proximate occasion of sin in which she is placed, and so he should tell her this. He will be justified in refusing absolution if she does not accept his ruling.¹

¹ St. Alphonsus, book vi, no. 604.

Case 7. An Abuse of Probabilism

Titius, a priest, always instructs and directs the faithful committed to his care according to probable opinions. Hence he preaches that they need not be solicitous about directing their intention to God, for he says it is solidly probable that an intention once had in life and not retracted suffices to give form to all the works of the whole life. Nor, he says, need they be solicitous about gaining indulgences, for the same intention once had and not retracted suffices for gaining any indulgences whatever, provided that the prescribed works are fulfilled, even if the indulgence attached to them is unknown. Hence it is asked:

1. How do probabilism, equiprobabilism, and probabiliorism differ?
2. Is the use of probabilism lawful in every matter?
3. Within the limits of lawful matter, is it always and for everyone better to use probabilism?
4. What is to be said about Titius's manner of acting?

SOLUTION

1. See approved authors. 2. See the answer to this question, p. 54. 3. Even when probabilism may be applied, is it well always to apply it for everybody? No, it is not. There is room for prudence on the part of the confessor as to when a probable opinion is to be used.

The confessor indeed has no legislative authority and can not impose on his penitents an obligation which does not exist. But if the penitent is willing to do what is more generous and more perfect, the confessor should encourage him, and he would act very imprudently if by insisting on a probable and contrary opinion he caused the penitent to adopt a less perfect course of action than he had been prepared to follow. Occasionally when he knows his penitent and thinks that it will be for this benefit, the confessor may laudably urge him to act in a generous way, even though there is no obligation in the matter.

4. What about Titius' way of acting?

It may be hoped that the case is a fictitious one, and that no priest was ever so foolish and ignorant as to misapply probabilism in the way that Titius is said to have done. Probabilism is specially meant to settle doubts of conscience, and for use in the confessional. It is not intended to furnish matter for pastoral instruction and sermons. The preacher and instructor, without exaggerating obligations, should always propose a high ideal to his hearers and exhort them to follow it. As Rodriguez says: "By this discourse we easily see how important it is that in our spiritual exhortations we speak of that only which is perfect in a sovereign degree. If we preach, for example, on humility, it must be that humility which is most profound, and which reaches to contempt of oneself. If we preach on mortification, it must be on that which subjects all our passions to reason; if we preach on conforming our will to God, we must recommend a conformity which leaves us no will but that of the Almighty, which resigns our will entirely to His, and which establishes all its content and joy in the

accomplishment of the divine will. . . . Because you are weak I must propose to you the most perfect kind of virtue and devotion, that by your aiming at what is best you may be able to perform at least what is of strict obligation.”¹

¹ *Practice of Religious Perfection*, vol. i, chapter viii.

Titius tells his people that they need not trouble themselves about directing their intention to God, for it is solidly probable that an intention elicited once for all will suffice to direct all the actions of one's life to God if it is not retracted. This is probably true, bearing in mind the clause “if it is not retracted.” But it would most likely be understood to mean that there was no necessity for thinking about God oftener than once in a lifetime, which is, of course, altogether false. Besides it is only an opinion, and those who acted upon it might lose a great deal of merit if it is not the true opinion. Titius adopted the wrong tone in his instructions; he should not be content with the minimum, even if he tells his people what the minimum is, but he should exhort them frequently to renew their intention of pleasing God, so that they may be the more secure and may reap the greater reward.

Titius followed a probable opinion about the intention which is necessary for gaining indulgences, but here again it is only probable; it is not certain that it would suffice for gaining all indulgences as he says. So in this matter also Titius acted imprudently and from a wrong point of view, and he should correct what he said. For it is not certain that probabilism may be used in the matter of indulgences, inasmuch as indulgences are a grant made by the Church on certain conditions, and anyone who wishes to gain them must satisfy the conditions laid down.²

² Bulot, *Compend. Theol. Mor.*, vol. ii, n. 1002.

Case 8. A Scrupulous Penitent

Martha, a devout woman, resolves to avoid all deliberate sins, even venial ones. She proceeds well for a certain space of time; afterward, however—either by divine permission, perhaps because of some petty vainglory, or by an impulse of the demon—she is oppressed by excessive anxiety. Then she thinks that she sins in almost every action, for she detects some disorder in her manner of walking or looking around, scandal to others in her clothing, some gluttony in eating, and something depraved in her thoughts, whether against charity or against chastity. Indeed, while she fights against scruples, she sometimes does what she believes to be mortal sin. She falls almost into despair, for she fears that because of her unfaithfulness God has abandoned her. Since the confessor sees that the scruples greatly harm the penitent, he never permits her to confess more than two sins, although he believes that for this reason the penitent sometimes omits mortal sins, and although the penitent says that she is in doubt whether she sins by omitting the rest and that consequently it is necessary for her to confess the others also, because in doubt it is not lawful to act against the law. Hence it is asked:

1. What are the signs of scrupulosity?
2. How in general are scrupulous persons to be treated by a confessor?
3. What is to be said concerning the case?

SOLUTION

1. What are the signs of scrupulosity ?

The confessor should know how to distinguish a really scrupulous person from one who only says that he is scrupulous or wishes to appear so. With this end in view theologians give certain signs by which scrupulosity may be known. The definition of a scruple will help us. A scruple is an idle fear and consequent anxiety that there is sin where it does not exist. The first sign, then, of scrupulosity is a tendency to idle fears and irrational dread of committing sin by a harmless action. Such idle fears and dreads are well known to physicians, and they seem only to differ from mental delusions in that a scrupulous person knows the folly he is guilty of, while one who suffers from delusions does not. Another sign of scrupulosity is that sin becomes a bugbear and is seen everywhere. The scrupulous person is fickle and inconstant in his judgment and consequent action; in fact he loses his power of forming a sane judgment on the point on which he is scrupulous. In spite of this he finds it difficult to surrender himself to the guidance of another, and is obstinately self-willed. He seems bent on torturing himself, and for this purpose apparently he fixes upon trivial points in the case which only a perverse ingenuity could suppose to be of importance.

2. How, in general, are scrupulous people to be treated by the confessor ?

The confessor should first of all make sure that the case is one of scruples, and this he will be able to do by attending to the signs of scrupulosity. Then, as the cure of scruples takes time, it will be well for him to ask the penitent whether he is prepared to follow his advice and to come to him regularly for confession. If he agrees, the confessor should give him some general rules of conduct, such as,

never to be idle, not to read rigoristic books or frequent the society of the scrupulous, to take care of his bodily health, to mortify his pride and cultivate a spirit of humble submission to God's will. Then he will note in what precisely the penitent is scrupulous and teach him how to act against his scruples and gradually overcome them by forming contrary habits.

3. The case. Martha, a pious woman, made a resolution to avoid all deliberate sin, whether mortal or venial. As she was a pious woman we may suppose that she was not in the habit of falling into mortal sin. To aim at avoiding all deliberate venial sin is not indeed to aim at the impossible, but to attain it means a high degree of perfection which is not reached without great graces from God and long and faithful endeavor. It would have been better for Martha to take one step at a time and try to conquer her faults one by one. There was probably too much self-reliance, some spirit of pride, in her otherwise good resolve, and her indiscreet fervor caused her to fall a victim to scrupulosity, of which she exhibits one of the ordinary signs. She tries to fight against her scruples, and in doing this she sometimes does what she thinks is a mortal sin. We must suppose that her scrupulous conscience makes her think that she commits mortal sin against her own better judgment and the advice of her confessor. She should despise these apprehensions and boldly follow her confessor's advice. Her case is desperate. The confessor should tell her to act freely, that it is foolish to fear sin as she does, and that sin can not be committed without freely consenting to something which is known to be bad. He is right in not allowing her to confess all that she wants to confess, and he may limit her to two sins or even to less, if he thinks it will benefit her. He may do this even though he knows that occasionally her confessions will not be integral, for scrupulosity sometimes excuses the penitent from integrity of confession. Even though Martha says that she doubts whether she is not committing mortal sin by not making an integral confession, the confessor must be firm, and tell her that she is safe in following the advice of her confessor. By degrees if she persists in not confessing and not thinking of her scruples and in acting against them, with the help of God she will recover her sanity.'

1 St. Alphonsus, book i, no. 13.

Laws

Case 1. The Promulgation of Law

Titius, the missionary rector in England, doubts whether he would incur the suspension which, in the Fourth Council of Westminster, decree XI, number 9, was enacted against ecclesiastics initiated into sacred orders who “are present at stage performances in public theaters or in places temporarily serving for the use of a public theater,” if he were present at performances which a certain confraternity of young people of both sexes was accustomed sometimes to give in the elementary schools of his mission. He therefore asks his bishop to resolve the doubt. The bishop refers the matter to a meeting of all the bishops which was to be held shortly afterward for conducting business. They decide that all performances other than those presented by boys or girls, even in elementary schools, are comprehended by the provincial law. The diocesan bishop communicates this decision to Titius and afterward to several of his other priests when occasion arises. Notwithstanding this decision, grave doubts about the proposed question still trouble Titius. Hence he asks:

1. To whom does it belong to interpret a law?
2. What kind of promulgation is required in order that a law may bind?
3. Who are subject to laws enacted in a provincial council?
4. What is to be said concerning the case?

SOLUTION

1. To whom does it belong to interpret an ecclesiastical law?

Law is interpreted authentically by the legislator, and such interpretation has the force of law if it be duly promulgated. It is interpreted doctrinally by theologians and canonists, whose authority is worth as much as it proves. It receives a customary interpretation from the way in which it is observed, for custom is the best interpreter of law, and from the practice of the curia, or the way in which it is applied in the ecclesiastical courts.

2. What sort of promulgation is required that a law may bind?

All are agreed that due promulgation is required in order that a law may have binding force. Promulgation is not a mere diffusion of knowledge concerning the existence of a law procured through the public press or by similar means. It is a publication of the law made by lawful authority, with a view to imposing an obligation on subjects to act as the law prescribes. It is left to the legislative authority to decide how a law is to be promulgated. Sometimes a special mode of promulgation is laid down in the law itself. Thus the decree *Ne temere*, Aug. 2, 1907, was promulgated by the very fact of its being transmitted to the Ordinaries. By the apostolic constitution *Promulgandi* of Sept. 29, 1908, Pius X decreed that “henceforward the Pontifical constitutions, laws, decrees, and other ordinances of the Roman Pontiffs, of the Sacred Congregations, and of the Offices, inserted and published in the said Bulletin (*Acta Apostolicae Sedis*) with the authorization of the secretary or of the highest Official of the respective Congregation or

Office from which they emanate, in this, and only in this manner be considered as legally promulgated, whenever promulgation is necessary and the Holy See has not otherwise provided.”

Episcopal laws are generally promulgated by being read in synod or in the churches of the diocese.

3. Who are subject to laws made by a Provincial Council?

Laws made in a Provincial Synod after recognition by the Sacred Congregation of the Council and promulgation by the Metropolitan bind all members of the Church who have a domicile or quasi-domicile within the territory represented by the synod, and who are not exempted. Even the bishops are subject to provincial laws, although they can dispense in them in particular cases. The interpretation of provincial law made by bishops either singly or gathered together in bishops' meetings, is not authentic, but rather doctrinal, although of course a bishop can if he pleases make a law for his own diocese.¹

¹ Laurentius, *Institutiones Jur. Eccles.*, n. 228.

4. The case. Titius, a missionary rector in England, doubted whether he would incur the suspension inflicted by provincial law by the fact itself on ecclesiastics in Sacred Orders who are present at stage plays in public theaters or in places serving for the time as public theaters, if he were to be present at a play given by a confraternity of young people of both sexes in the elementary schools of his mission. He referred the doubt to the bishop, who brought it before the other bishops at their meeting. The bishops decided that all plays given by others than mere children even in schools are comprehended in the law. The decision was communicated to Titius by his bishop, who on occasion communicated it to others as well. Notwithstanding this Titius still has grave doubts on the point.

It will be clear from what we said above that the decision of the bishops has not of itself the force of law. The main question is: Does the case come under the provincial law according to its natural signification? The chief difficulty is: Are elementary schools places serving for the time being as a public theater when a play is given in them? If private theatricals were held in a school for a few friends of the confraternity, it clearly would not be used as a public theater. But if the play is not private but public, in the sense that any one who chooses to present himself is admitted, then it would seem that the very fact of a play given there makes it a place serving the purpose of a public theater for the time. It is immaterial whether payment be required or not. So that it would seem that the decision given by the bishops was a declaration of the law according to its natural and obvious sense. Of course the sense of a positive law like the one with which we are concerned may be limited or extended by custom. This law is limited by custom in England to the extent that plays given by children do not come under it. In some dioceses it is said that custom goes further and excludes from the meaning of the law plays given by amateurs in schools and other such places. Whether in any particular diocese there exists such a custom against the law, and whether it is legitimate or not, are questions of fact to be settled by the evidence.

Case 2. The Subject of Law

Lucius, an Englishman, having been ordered by his doctor to seek southern regions because of the mildness of the climate, determines within himself to go to Rome and spend the winter there. A man of timorous conscience, he first asks his usual confessor to resolve certain doubts concerning the manner of life to be adopted at Rome. For he doubts whether he will be bound with the Romans to abstain from meat not only on Friday but also on Saturday; whether he can eat meat with them on Wednesday during Advent; whether, notwithstanding a certain decree of the Cardinal Vicar of the City, it is lawful for him to visit Protestant churches there even when offices, or “services” as they are called, are being celebrated; whether he is bound to observe all the holy days of obligation, several of which are not obligatory in England; and finally whether the same answer is to be given even if he remains there for six or seven months. The confessor replies that the simplest rule is to be observed: “When you are at Rome, live according to the Roman manner,” and dismisses him. Hence it is asked:

1. Who is called an inhabitant, a traveler, and a vagrant?
2. By what laws are travelers bound?
3. What is to be said concerning the case?

SOLUTION

1. Define the terms inhabitant, traveler, vagrant. A person is called an inhabitant of the place where he has his domicile. A domicile is acquired in a place by actually taking up one’s abode there with the intention of living there perpetually. By ecclesiastical law a quasi-domicil renders a person subject to most ecclesiastical laws like a true domicile. This quasi-domicil is acquired by living in a place with the intention of remaining there for the greater part of a year.

A traveler is one who for a short time, less than six months, takes up his abode in a place other than that in which he has his domicile or quasi-domicil.

A vagrant is one who has no fixed abode, neither domicile nor quasi-domicil, anywhere.

2. To what laws are travelers subject?

Travelers, or strangers, are subject to the common ecclesiastical law which is observed in the place where they stay. They are also subject in the matter of contracts to the law of the place where they conclude them, and if they commit crimes there, they can be punished according to the law of the place where they commit them. Unless required for the avoidance of scandal, a stranger is not bound by the special laws of the place where he is staying, probably not even if there is a similar special law in his own country; for laws only bind subjects, and a stranger is not a subject. Neither is a stranger bound by the special laws of his own country while he is out of their jurisdiction, for a law is restricted to the territory of the legislator.

3. The case. Lucius, an Englishman, determines for reasons of health to pass the winter in Rome. As he is a man of delicate conscience he asks his confessor, before starting, to settle certain

doubts as to what he may or should do while staying in Rome. First of all he wants to know whether he will be obliged to abstain from flesh-meat not only on Fridays but on Saturdays as well, as they do in Rome. Inasmuch as Saturday abstinence is part of the common law, though in England and in many other countries a dispensation has been granted, and a stranger is bound by the common law wherever it is observed, Lucius should abstain on Saturdays while he is in Rome, if his health permits him. He may, however, eat meat on the Wednesdays in Advent, for the fast and abstinence observed on those days in England is not part of the common law. By an Instruction of the Cardinal-Vicar of Rome, July 12, 1878, approved by Leo XIII, all were strictly prohibited from visiting Protestant places of worship in Rome during service, and Lucius wishes to know whether he is bound by this law. If this were a merely positive precept, Lucius would not be bound by it, but in the circumstances which exist in Rome it is a precept whose observance is required by the necessity of avoiding scandal and of showing no approbation of heresy. Lucius would therefore be bound by it. With regard to days of obligation he is bound to observe all those which belong to the common law, though they may be suppressed and observed only as days of devotion in England. He is not bound to observe those which are merely local. If he had the intention of staying in Rome for six or seven months, he would become subject to the local law, and would therefore be under the obligation of keeping the local days of obligation. From what has been said it is clear that there are exceptions to the generally wise rule: "When you are in Rome, do as Rome does."

Case 3. Not Excused from Observing the Law

Titius, a confessor, remains doubtful whether certain drunkards who belong to his mission sin or not by omitting Mass on Sunday. The circumstances of the case are as follows. Every Saturday afternoon these men receive their wages for the week's labor. Having received the money, they immediately go to the tavern and drink until they are drunk. They return home at about eleven o'clock at night, when the tavern closes, and on the following day suffer the effects of drunkenness in bed. Titius doubts whether they are guilty not only of drunkenness but also of the Mass omitted on Sunday, for they are drunk before the law begins to urge, and when it urges they are incapable of fulfilling the law. Hence it is asked:

1. What causes exempt from a law, and what causes excuse from a law?
2. Is it lawful voluntarily to posit either kind?
3. Is someone bound, if he can, to remove an excusing cause in order to fulfill the law?
4. What is to be said concerning the case?

SOLUTION

1. What are causes exempting from a law and causes excusing from a law?

Causes exempting remove a subject from the jurisdiction, as does departure from the territory within which the law binds. Causes excusing relieve him of the obligation of obeying the law though he remains subject to it.¹

¹ Bucciaroni, vol. i, no. 216.

2. Is it lawful to put both causes exempting and causes excusing voluntarily?

A subject may put causes exempting voluntarily, for a law does not compel a man to remain subject to it; it only obliges him to act in conformity with it as long as he remains subject. By special law, however, one who has incurred a reserved case in one diocese can not be absolved from it if he go to another diocese with the intention of getting absolution there.

While remaining under the jurisdiction of the law, a subject may not do anything with the intention of avoiding the obligation of complying with it. But for a sufficiently grave reason he may do something, although he foresees that the doing of it will make it impossible for him to comply with a positive law.

3. Is one bound to remove an excusing cause if he can, so as to be able to comply with a law?

Much depends on the nature of the law in question, for some laws bind more strictly than do others. Thus Lehmkuhl says: "Nor do they judge that anyone is bound by force of the law of hearing Mass to procure release from a censure, liberation from prison, etc., if, being imprisoned, he cannot assist at Mass, unless perhaps for a long time, or through design lest he be present at the sacred rite, he

neglects these things. Nevertheless, they hold that someone is bound to remove those bonds or impediments by reason of the precept of Easter Communion; for which precept, even several days before the time of the law becomes urgent, it is not lawful to place an impediment, unless a sufficiently grave cause is present.”²

² *Theol. Mor.*, vol. i, n. 158.

4. The case. Titius, a confessor, doubts whether some drunkards in his parish commit sin by omitting Mass on Sundays. Every week these men get their week’s wage after mid-day on Saturday. They go straight to the public-house and get drunk, returning home about 11 p.m. when the public-house closes. Next day they sleep off the effects of drink in bed. Although they certainly sin against temperance, Titius doubts whether they commit sin by not hearing Mass, for they are drunk before the time when the law of hearing Mass begins to be urgent, and when Sunday comes they are too ill to get up. If there were question of putting some honest excusing cause, the doubt of Titius would be well founded. Thus Gury says: “It would be lawful, from mere pleasure, to enter upon a journey which would impede attendance at Mass throughout the whole of Saturday, up to one or another hour before Sunday.”¹ This, however, can not be applied to our case. For in this matter much depends on the intention of the legislator. He does not intend to restrict the liberty of his subjects so far as to compel them to forego honest recreation on Saturday, though this will prevent them hearing Mass on Sunday. But the legislator does not use the same indulgence in favor of drunkards, who get drunk on Saturday afternoon, foreseeing that they will not be in a fit state to hear Mass on Sunday. They sin, then, not only against temperance, but also against the obligation of Sunday Mass.

¹ Gury, in Génicot, vol. i, no. 116.

Case 4. Non-catholics and the Law of the Church

Julia, a Catholic matron, asked her confessor whether it is lawful to provide meat for Protestants on days of abstinence. For sometimes, as she says, she has Protestant guests, either relatives or friends, who remain with her at home for several days; and if a day of abstinence occurs, she is accustomed to leave meat on a side table so that they may take it if they wish. This manner of acting, as is evident, has its inconveniences; and therefore, if it is lawful, she would like politely to invite them to eat meat on days of abstinence. Hence it is asked:

1. Who are subject to a law?
2. Are heretics and schismatics subject to ecclesiastical laws?
3. Is it lawful to cooperate in another's sin, whether formal or material?
4. What is to be said concerning the case?

SOLUTION

1. Who are subject to a law so as to be bound to obey it?

All those and only those are bound to obey a law who are subject to the authority of the lawgiver. It is he who imposes the obligation, and he can only bind those who are subject to his authority.¹

¹ Bucceroni, vol. i, no. 192.

2. Are heretics and schismatics subject to ecclesiastical laws?

The Church certainly has power to bind all those who are validly baptized, for by baptism they become subject to her authority. They will in general be excused from formal transgression on account of ignorance when they violate ecclesiastical law which they do not recognize. Moreover, many approved authors hold that it is not the intention of the Church to bind heretics and schismatics by such laws as are designed directly to procure the spiritual good of souls, such as laws imposing fasting, abstinence, and the observance of holy-days. It is the intention of the Church to bind them by the diriment impediments of marriage unless in a particular case she exempts them, as she does with regard to clandestinity.¹

¹ Cavagnis, *Instit. Jur. Can.*, vol. i, n. 566.

3. Is it lawful to co-operate either in the formal or in the material sin of another?

There can not be formal co-operation in another's sin without willing that sin, and, as this is sinful, formal co-operation in the sin of another, whether formal sin or material, is never lawful. Material co-operation in an act of another which is not necessarily sinful in itself, though as put by the other party it is sinful, is allowed, provided that there be good and proportionate reasons for it, and provided that the sin of the other party is not intended, and provided also that the co-operator is not bound by a special obligation to prevent the act.

4. The case. Julia, a Catholic, has been accustomed to leave flesh-meat on a side-table on days of abstinence when she has non-Catholic guests, so that they might help themselves to meat if they chose to do so. In this way she got over the difficulty she felt about inviting them expressly to eat flesh-meat on days when the Church forbids flesh-meat. However, the method had its drawbacks, and so she asked her confessor whether she might expressly invite them to take flesh-meat. From what has been said above it is plain that she may, for in all probability the Church does not intend to bind non-Catholics by such laws. A faculty is sometimes granted to bishops to enable them to allow their subjects to offer meat to non-Catholic guests on days of abstinence, but, as Putzer remarks, such a faculty is not strictly necessary.¹

¹ Putzer, *Comment. in Facult. Apost.*, p. 312.

Case 5. Non-acceptance of a Law

A certain ecclesiastical law was duly promulgated at Rome, and knowledge of it was spread through the Catholic world by periodicals. The bishops of a certain region, however, did not promulgate it in their dioceses, nor did they urge its execution; it was not commonly observed, and indeed some of its prescriptions were acted against in good or bad faith. Titius, a young man of excellent character who cultivates theological studies, conceives anxieties and difficulties from this because the doctrine handed down by theologians concerning laws does not seem to agree with practice. Hence he has recourse to his confessor and asks for the solution of his difficulties. Therefore it is asked:

1. Is promulgation required in order that a new law may bind subjects, and what kind?
2. Is acceptance by the people required in order that a law may bind?
3. Does a new law abrogate contrary customs?
4. What is to be said concerning the case?

SOLUTION

1. For the answer to this question, see p. 74.
2. Must a law be accepted by the people in order to be binding?

The question concerns ecclesiastical law and the answer must be in the negative, for the obligation of a law comes from the will of the lawgiver, not from the subjects. In spite of this, however, the fact that a law is not put into execution and is not observed may incidentally take away or suspend its binding force. This may happen in various ways. The bishops, whose duty it is to see to the observance of ecclesiastical laws, may know of serious difficulties which stand in the way of the observance of some particular law, and they may have reported in this sense to the Holy See. If in such cases the Holy See insists on the observance of the law, the bishops should enforce it; but if the Holy See says nothing, the law may be considered as suspended for the present. Or it may be that on account of the difficulties in the way the observance of the law was not insisted on; in such a case the law will not bind practically, with the tacit consent of the legislator, or, after a certain time, on account of the prevalence of a contrary custom.

3. Does a new law abolish contrary customs?

A new ecclesiastical law abolishes general customs to the contrary, but it does not abolish particular customs, unless the law contains a clause specially revoking them.¹

¹ C. 1, *de Constit.*, in 6; St. Alphonsus, lib. i, n. 109.

4. The case. Titius, a theological student, is distressed because he thinks that practice does not agree with the theory put down in the books about the binding force of a law. There a law is said to bind independently of its being received or not by the people. However, he notices that

a certain law was duly promulgated in Rome, and it became known by being published in the papers. And yet the bishops in a certain country did not publish it in their dioceses, nor urge compliance with it, nor was it commonly observed; on the contrary some of its provisions were infringed. So Titius goes to his confessor and asks him for an explanation. The confessor will doubtless tell Titius that either the law in question was never meant for the dioceses which he has in view, or that the bishops have referred the matter to Rome, or that the difficulties in the way of observance are so great that the bishops think it best to say nothing about the law for the present. In any case Titius need not distress himself about the matter, which chiefly concerns the bishops; let him be ready to observe the law if and when it is enforced, and he may in the meantime do as others do, for we are here considering a merely positive law and its binding force.

Case 6. Payment of Taxes

Caius, a Catholic merchant, is troubled by scruples concerning the obligation of paying taxes. He tells his confessor that he declared to the officials charged with assessing taxes that his annual income amounted to no more than five hundred pounds sterling, although it easily amounts to seven hundred, and that consequently he pays much less than is just. Moreover, he says that he brought a large quantity of cigars from the Continent into England without paying any duty, because, while passing, he secretly placed a gold coin in the hand of the official in charge of the port, who then permitted him to pass with his luggage without difficulty. Hence it is asked:

1. How are direct and indirect taxes distinguished?
2. Does the government have a right to impose taxes?
3. Does the English government impose taxes in such a way that, before their acceptance, it has a strict right to them?
4. What is to be said concerning the case?

SOLUTION

1. How does direct differ from indirect taxation?

Direct taxes are levied on the possessors of property, land, income above a fixed sum, and on those who succeed to property on the death of a former owner; and they are payable by them on demand. Indirect taxes are levied on certain commodities such as spirits, beer, tobacco, tea, wine, and form part of the price paid for those commodities by the consumer. At present, in England, the burden of taxation is divided almost equally between direct and indirect taxes.

2. Has the government the right to impose taxes ?

Yes, certainly; a lawful government has the right to levy taxes, for money must be raised to carry on the government of the country, to provide for its defence, to pay for the cost of education, the civil service, and so forth.

3. Does the English Government so impose taxes that before they are paid it has a strict right to them in justice?

The government has a right to impose taxes, but in doing this it must of course follow the dictates of distributive justice, so that no class of persons in the community should be unduly burdened. It has the power of putting an obligation on the consciences of its subjects so that they will be compelled under pain of sin, if the government so intends, to pay the sums imposed by taxation. Subjects may even be obliged in justice to pay the taxes imposed, and thus they may be under the obligation of making restitution, if they have failed in their duty. But although the government has the authority to impose an obligation of this kind, it does not necessarily use all its authority. Other superiors, such as parents, do not always intend to impose a strict moral obligation under pain of sin on those

subject to them whenever they signify a wish that they should do something. Neither need the State employ all its authority when it imposes taxes. It may be satisfied with imposing them under the obligation of a penal law, confident of its power to secure payment without regard to the consciences of its subjects. It is at least probable that all English positive laws, including taxation, are of the nature of penal laws.¹

¹ *Manual of Moral Theology*, vol. i, p. 127.

4. The case. Caius, a Catholic merchant, is troubled in conscience because he declared to the income tax officials that his yearly income was £500, whereas it was at least £700, and he only paid income tax on £500. Caius told a lie to the officials, who are empowered by law to put such questions, and therefore have a right to the truth. But it does not follow that he is now bound to make up what he failed to pay on the additional £200, for, as we said above, English law does not give the government a strict right to the money derived from taxation till it is paid in. Nor can we say that if this view be accepted, Caius will escape part of the obligations which he owes to his country. For Caius necessarily pays what others of his position and style of living pay in the shape of indirect taxes, as well as income tax on the best part of his income, so that it can not be said that he does not pay for the benefits he derives from the institutions of his country. His action is not to be praised or imitated, but when we are asked whether he is bound to make restitution for the past, we must answer “No.”

By generously tipping the custom-house officer at the port Caius brought from the continent a large quantity of cigars without paying duty for them. The custom-house officer sinned by taking the bribe and not doing his duty as he was bound to do by an express or at least tacit contract entered into when he accepted his office. Caius induced him to commit this sin, and therefore sinned himself by co-operating with the sin of another. Still, inasmuch as the money levied in taxes does not belong in justice to the government before it is paid in, neither Caius nor the custom-house official is bound to make restitution to the government for what it would have obtained if the officer had done his duty.

Case 7. A Spaniard with His Bulla Cruciatæ

Francis, a Spanish merchant staying at Liverpool in order to conduct various business affairs, must remain there for several months, afterward to return to Spain. Meanwhile, he makes his confession to a diocesan priest. He admits that he has eaten meat, as well as eggs and lacticinia, on days of abstinence and fasting, for he possesses the Bulla Cruciatæ and is merely a peregrinus. In addition, he accuses himself both of sins reserved to the diocesan bishop and of those reserved to the Supreme Pontiff. Since the confessor does not know the force of the Bulla Cruciatæ, he trusts the penitent when the latter asserts that he has the privilege of obtaining absolution, and absolves him. It is asked:

1. What is the Bulla Cruciatæ, and what are its privileges?
2. Are these personal?
3. Is the Bulla Cruciatæ in force outside Spain?
4. What is to be said concerning the case?

SOLUTION

1. What is the Bulla Cruciatæ, and what privileges does it confer?

The Bulla Cruciatæ, or Bull of the Crusade, was a papal Bull which originally granted indulgences in favor of those who took part in the wars against the Moors in Spain. Those who could not fight against the infidel could help in the good work by contributing money, and those who did this were admitted to a share in the privileges granted by the Bull. The Bull continued to be granted after the crusades ceased, and the proceeds derived therefrom were devoted to the building of churches and other pious objects. Leo XIII granted a Bulla Cruciatæ to Alphonsus XIII, in the year 1902, to be in force for twelve years. Besides plenary and other indulgences, this Bull grants to the faithful laity who live in the Spanish dominions, or who come thither from elsewhere, the faculty of eating meat on fasting-days, but this faculty can only be used within the Spanish dominions. The faithful are also empowered once during life, and once again at the hour of death, to choose a confessor who receives authority to absolve them from all reserved sins and censures except manifest heresy. The Archbishop of Toledo, as Commissary-General, is granted certain faculties for dispensing from ecclesiastical law and granting compositions to debtors who owe money to creditors whom they can not discover.¹

¹ *Acta S. S.*, vol. xxxv, p. 562.

2. Are these privileges personal ?

Yes, in general; but that which grants permission to eat meat on fasting-days can only be used within the Spanish dominions, and so this privilege is local as well as personal.

3. Is the Bulla Cruciatæ granted for other countries besides Spain?

Yes, it is granted to the old kingdom of Naples, or the kingdom of the Two Sicilies, as it is sometimes called, to Portugal, and to Spanish America, which formerly were subject to the rule of Spain.

4. The case. Francis, a Spanish merchant staying for some months at Liverpool, goes to confession to one of the priests of the diocese. He says that he has eaten meat, eggs, and lactinia on days of fasting and abstinence, for he has his Bulla Cruciatae. In doing this he did wrong, for the Bull expressly limits the use of this dispensation to the Spanish dominions.

Francis also accuses himself of sins reserved both to the bishop of the diocese and to the Holy See.

As Francis is a peregrinus, it is probable that he does not incur cases reserved to the Bishop of Liverpool, but, putting that question aside, he can be absolved once by virtue of the Bull from all cases reserved to any Ordinary, or to the Holy See, except from manifest heresy. This faculty is not restricted to any particular place, so that Francis can be absolved by the Liverpool priest unless he has already made use of the faculty.

Case 8. The Roman Congregations

John, a Catholic layman learned in biblical studies, thought that the arguments of the critics had settled the question of the Mosaic authenticity of the Pentateuch. After the responses issued by the Biblical Commission on June 27, 1906, he indeed wrote nothing publicly in defense of his opinion, which he nevertheless continued to retain, and openly indicated to his friends that, in his opinion, the Biblical Commission had erred. When John's parish priest and confessor heard this, he asked how John—who maintained complete silence about this matter in confession—was to be treated. Hence it is asked:

1. What are the Sacred Roman Congregations, and what power do they have?
2. What force do the responses and decrees of the said Congregations have?
3. What is to be said concerning the case?

SOLUTION

1. What are the Roman Congregations and what power have they?

The Roman Congregations are so many tribunals consisting of cardinals and officials designed to assist the Pope in the government of the Church, especially in the way of administration and discipline. Some few Congregations existed before the time of Sixtus V, but that Pope, by his constitution *Immensa*, Jan. 22, 1587, increased their number and defined the limits of their authority. In course of time, some new Congregations were added to those of Sixtus V, and difficulties arose as to their competence. Hence Pius X, by his constitution *Sapienti Consilio*, June 29, 1908, organized them afresh. According to this constitution there are thirteen Congregations, each of which has its appointed sphere of action. The Congregations are forbidden to transact any serious or unusual business without consulting the Pope, and their decrees require the Pope's approbation, except those for which he has granted special faculties.

2. What force have the answers and decrees of the said Congregations? We must distinguish between various classes of decrees and answers. (a) Sometimes documents issue from the Holy See which, in form, are decrees of one of the Congregations, but which are specially approved in forma specifica, by the Pope. In this way the decree of the Sacred Congregation of the Council, *Ne temere*, was issued Aug. 2, 1907. Such a decree is really a papal act and has the force of a pontifical law; the Pope uses the Congregation to issue a new law of his own. (b) Pius IX, in his letter to the Archbishop of Munich, Dec. 21, 1863, declared that all Catholics are obliged to submit to doctrinal decisions which emanate from the Roman Congregations. The obligation of submission, in this case, is not satisfied by saying and doing nothing contrary to such decrees. Ordinarily, at least, there must also be an internal submission under pain of falling into the sin of temerity and pride, in preferring one's own opinion to that of a competent authority which is empowered to decide such questions. But inasmuch as the Roman Congregations are not infallible, it may possibly happen that a particular decree of

some Congregation is false, and a learned man may see good reason for thinking that it is false. Such a one is not bound to assent to what, with good reason, he thinks is false; he should not openly attack the decree, but he may propose his reasons to the Congregation whose decree is in question, and await the result. (c) Particular sentences and decisions given by the Roman Congregations, in particular cases, bind the parties in the case, as all admit. But opinion is divided as to whether such a decision binds others as well as the parties immediately concerned. Some hold that they do not, for want of due promulgation. Others hold that they do, inasmuch as they are merely authentic applications of the law.²

2 Génicot, vol. i, no. 135.

3. The case. John, a Catholic layman, and learned in Biblical studies, thought that the arguments of the critics against the Mosaic authorship of the Pentateuch were decisive. The Biblical Commission, June 27, 1906, decided that they were not decisive. Although John did not publicly write against this decree, he nevertheless adhered to his opinion, and openly told friends that he thought the Commission had made a mistake. When his parish priest and confessor heard this, he was puzzled how to treat John, who said nothing about the matter in confession.

The confessor doubtless will remember that by the *Motu Proprio* of Pius X, *Praeestantia Scripturae Sacrae*, Nov. 18, 1907, the obligation to obey the decrees of the Biblical Commission is the same as the obligation to obey the doctrinal decrees of the Roman Congregations. The words of the Pope are: "Wherefore we see that this must be declared and enjoined, just as we declare at present and expressly enjoin, that each and every person is bound in conscience by the duty of submitting to the judgments of the Pontifical Commission on Biblical Matters, whether those already issued or those to be issued hereafter, in the same way as to decrees of the Sacred Congregations which pertain to doctrine and have been approved by the Pontiff; nor can all those who by words or writings attack such judgments avoid the stigma both of refused obedience and of temerity, or therefore be free from grave fault; and this besides the scandal by which they offend and the other things for which they can be responsible before God, especially because of other pronouncements in these matters made rashly and erroneously."¹ John does not, indeed, impugn the decree of the Biblical Commission, but he openly says that in his opinion it is a mistake. Therefore he does not submit to it, and he can hardly be excused from a grave sin of disobedience, temerity, and scandal, especially as his friends doubtless look up to him as an authority on Biblical subjects. Yet John says nothing about this in the confessional. His confessor, who is also his parish priest, can not allow him to go on receiving the sacraments of the Church while openly refusing to accept her authoritative teaching. The confessor, therefore, must broach the matter to him, kindly but firmly, and admonish him of his obligations. If he refuses to submit, he must deny him absolution.

1 Lehmkuhl, vol. i, no. 304.

Case 9. A Passive Resister

Titius, a Catholic layman, in order to show how far the efforts of those who passively resist the payment of the tax for schools extend, and because he thinks that unjust burdens are imposed upon Catholics by the school law, refused to pay the school tax as being against conscience. Paul, however, a Catholic magistrate, compelled Titius, when brought before him, to pay the tax under penalty of undergoing imprisonment. Philip, another Catholic, being scandalized by this, thought that either the one or the other must necessarily have done wrong. Hence it is asked:

1. What kind of obligation do English civil laws impose upon subjects?
2. Can or must unjust laws be obeyed?
3. Is it lawful for a Catholic judge to pronounce sentence according to an unjust law?
4. What is to be said concerning the case?

SOLUTION

1. See this question answered, p. 90; also see *Manual of Moral Theology*, p. 127.
2. May one and ought one to obey unjust laws?

We may not obey a law which commands us to do something contrary to the law of God, for “we ought to obey God rather than men.” If the law is unjust because it lays an unjust burden on a particular person or class, it will not be morally wrong, as a rule, to submit to it, for we may, without sin, forego our strict right. Whether we ought to submit to it or not, will depend upon circumstances. If resistance would produce greater harm than good, as is often the case, there will be a duty of submission to prevent greater evil. If the contrary is true, we are not bound to submit.

3. May a Catholic judge pass sentence according to an unjust law?

Here we must distinguish. If the law prescribes the doing of something that is against the law of God, as idolatry, for example, a judge may not give sentence according to such a law. To command any one to commit idolatry is, and must be, always wrong. Sometimes civil laws are unjust because they are against the rights of the Church. In such cases, if the Church can forego her right, she sometimes does so. Thus, although the civil laws about judicial separation of Catholic married couples are a usurpation of ecclesiastical jurisdiction, yet the Church permits such cases to be tried in the civil courts in England with due precautions.¹

¹ Holy Office, Jan. 23, 1886.

If the law is unjust because it is against the rights of the subject, we must distinguish again. Some rights, as that to life, are inalienable; and a judge can not pass sentence according to a law which unjustly imposes the death penalty. If the law merely imposes a fine or imprisonment, such a penalty may be submitted to without sin, and if the judge can not escape the obligation of imposing the penalty without forfeiting his position, it is a probable opinion that he may impose it, and the subject

should then submit to it for the common good, at any rate, when resistance would be useless, or would cause greater harm.²

² Bucceroni, vol. ii, no. 19.

4. The case. Titius, a Catholic, refused to pay the school rate in order to give an object-lesson to the passive resisters, and because he thought it unjust to Catholics. Titius can be excused from sin on the general principle that English law does not bind under pain of sin, and because of his good faith, and also because his assertion is well grounded that Catholics are unduly burdened, inasmuch as they do not get a fair share of the public money contributed to education. Nor does this doctrine excuse the passive resisters, whose case is quite different. For they combine together to resist the law without justification, seeing that they get more than their share of public money for education. Whether they are in good faith or not can be known only to God.

Titius was brought up before Paul, a Catholic magistrate, who sentenced him to go to prison or to pay the tax. Paul acted rightly in passing sentence according to law, as is clear from what was said above. Nor need Philip be scandalized, for neither Titius nor Paul need necessarily have committed any sin in acting as they did.

Case 10. Putting Obstacles to Sunday Mass

Charles, a young Catholic, joins a cyclists' society, or bicycle club, and is accustomed to leave home with his companions on Saturday afternoon in order to visit distant places celebrated either in history or otherwise, and to return home on Sunday afternoon. If there is a Catholic church in the place, Charles hears Mass; otherwise he spends the time going about the place. When, however, on a certain occasion he heard an instruction about hearing Mass, being moved by stings of conscience, he asked his confessor whether he had acted lawfully or not. Hence it is asked:

1. How do causes which excuse from a law and causes which exempt from it differ?
2. Is it lawful to place such causes in the way of fulfilling the law?
3. What is to be said concerning the case?

SOLUTION

1. See this question answered, p. 80.
2. This question is answered, p. 81.
3. The case. Charles, a young Catholic, joins a bicycle club and is accustomed to go with other members of the club on Saturday afternoons to distant places of resort. They stop at the place for the night and return home on Sunday afternoon. If there is a Catholic church in the place, Charles hears Mass on Sunday morning, otherwise he spends the time in sight-seeing. An instruction on hearing

Mass puts a scruple into his head about this matter, and so he asks his confessor whether he had acted lawfully. Charles would have done wrong if he had chosen places of resort on account of there being no Church there where he could hear Mass. But this he did not do. The question for solution resolves itself into this: May a man for the sake of recreation put himself in circumstances in which he foresees that he will not be able to hear Mass on a day of obligation? Theologians answer that he may not do this on the day itself nor during the time when the law begins to impose an obligation to make ready to fulfil the law. It is difficult to determine the exact time when we are obliged to make preparations for, or not to put impediments in the way of hearing Mass of obligation. Some approved authors say that the obligation does not arise until a few hours before the day on which Mass is to be heard. Thus Génicot says: "It is lawful to undertake a journey even without a special cause, although it is foreseen that this will be an impediment to satisfying, after several days, the precept of hearing Mass. It is not lawful to undertake a journey merely for recreation when the hour for hearing Mass is now imminent. It would be lawful, from mere pleasure, to enter upon a journey which would impede attendance at Mass throughout the whole of Saturday up to one or another hour before Sunday."¹ According to this opinion Charles did not commit sin in what he did, but he should be warned not to do it too often, and to take care not to become negligent about hearing Mass on Sundays.

¹ Gury, vol. i, n. 111; *Instit. Theol. Mor.*, vol. i, n. 116.

Case 11. A Statute-barred Debt

A certain Titius comes to confession and asks whether he is bound to pay a debt contracted six years previously but, because of inability, not paid up to the present, nor meanwhile demanded by the creditor because of the latter's kindness. Hence it is asked:

1. Upon what things do the force and obligation of a law depend?
2. Can civil law impede or even remove a natural obligation?
3. Let it be proved what the laws which are called Statutes of Limitation effect.
4. What is to be said concerning the case?

SOLUTION

1. On what does the binding force of a law depend?

The binding force of a law depends partly on the matter of the law, but chiefly on the intention of the lawgiver. It depends partly on the matter, for a human lawgiver can not impose a grave obligation in matter which is altogether trivial. Such a thing would be against reason, and law is a reasonable ordinance. But the lawgiver is not bound to impose a serious obligation whenever the matter is serious. He may if he likes and if he thinks it will be for the common good impose a light obligation under pain of venial sin, or he may be satisfied with a penal obligation to submit to the penalty prescribed for violation of the law, and not bind under pain of even venial sin.¹

¹ St. Alphonsus, book i, treatise 2, nos. 140–143.

2. Can civil or municipal law prevent a natural obligation arising or take it away?

The civil law can not impose an obligation which is contrary to the natural law, for there can be no obligation to do what is wrong. But civil law for the common good can lay down prescriptions and conditions to be observed in order that rights may be acquired, and thus it can prevent acts from having their natural effects through want of formalities required by law, and in certain cases it can even take away rights and consequent obligations. Thus the formalities required by law for the validity of a will prevent obligations arising from an informal will though they would arise if the law did not exist; and the law of prescription takes away rights from one person with their corresponding obligations and transfers them to another.

3. Show what effect the Statutes of Limitation have in English law.

The Statutes of Limitation fix a certain time within which an action must be enforced according to English law. There are many of them, and they fix various limits of time for different actions. For the purposes of this case it will be sufficient to mention the Real Property Limitation Act of 1833 and that of 1874, which prescribe a period of twelve years within which actions must be brought to recover land or rent other than land or rent belonging to spiritual and eleemosynary corporations

sole, and land belonging to the Crown. On the expiration of the prescribed period of limitation not only is the remedy by action barred, but the title of the persons against whom the statute has run is extinguished.¹ From what was said above it is clear that this extinguishing of the right is not beyond the powers, and that it is efficacious both in the external forum and in that of conscience.¹ The Limitation Act, 1623, as amended by subsequent statutes, prescribes a period of six years within which an action for debt grounded upon any lending or contract without specialty must be brought. The effect of this law can not be greater than was intended by the legislature and than the practice of the courts and expert opinion assign to it. Judged by these standards there can be no doubt as to what the effect of the law is. It merely bars the remedy; it does not extinguish the right.

¹ *Encyclopedia of Laws*, under the word "Limitations (Statutes of)."

¹ *Manual of Moral Theology*, vol. i, p. 380.

Sir F. Pollock says: "Now there is nothing in these statutes to extinguish an obligation once created. The party who neglects to enforce his right by action can not insist upon so enforcing it after a certain time. But the right itself is not gone. . . . Although the creditor can not enforce payment by direct process of law, he is not the less entitled to use any other means of obtaining it which he might lawfully have used before."²

² *Principles of Contract*, p. 599.

4. The case. It will be clear from what has been said that Titius is bound to pay the statute-barred debt. The obligation remains unless it has been taken away. No other way in which the obligation could have ceased is suggested in the case except the operation of the Statute of Limitation. This certainly does not take away the obligation.³

³ *Manual of Moral Theology*, vol. i, p. 126.

Case 12. Interpretation of a Privilege

Caius and Julius, priests, went for a whole day to a distant place for the sake of recreation. Since they foresaw that they would not be able to recite the Breviary after their return, they intended to take it with them; nevertheless, each, occupied with other things, forgot it. Caius, taking the opportunity, began to recite the Rosary, saying that, by reason of the commutation granted to them in the faculty sheet, the Rosary was to be substituted whenever the Breviary could not be recited because of a legitimate impediment. Julius, however, replied that he would not recite the Rosary, for the faculty in the sheet was a privilege which no one was bound to use. Having returned home around midnight, they asked the rector which of them had judged better concerning the obligation of reciting the Rosary. Hence it is asked:

1. What is a privilege, and what are its various species?
2. How is this statement to be understood: “No one is bound to use a privilege”?
3. How is “Rosary” to be understood in the faculty mentioned in the case?
4. What is to be said concerning the case?

SOLUTION

1. What is a privilege, and what different sorts are there?

A privilege is defined by canonists and theologians to be a private law conferring on the holder some special favor. It partakes of the nature of a law, inasmuch as it imposes on others the obligation of not violating the privilege.

Privileges are personal when they are granted immediately to a physical or moral person; that is, to an individual, or to a class, or to a corporation. Those which are granted immediately to a thing or a place are called real privileges. They are against the law when they derogate from it, as does the privilege of a private oratory. If there be no law from which it derogates, a privilege is said to be beyond the law, such as the faculty of absolving from reserved cases.

2. How is the saying to be understood, “No one is bound to use a privilege”?

This rule follows from the nature of a privilege, for a privilege is a special favor. But if it imposed on the holder an obligation to use it, it might become a burden. However, the rule must be understood with some limitations; for it may be that if I do not use a privilege which I possess, harm may ensue which I could prevent by using the privilege. In such a case charity requires that I should use the privilege. And thus if a penitent comes to me with a reserved case, for which I have a special faculty, I am bound to give absolution. Individuals who belong to a privileged body are not at liberty to renounce the privileges of their order, so that a cleric can not lawfully give up the privilege of the ecclesiastical court.

3. How is “Rosary” to be understood in the faculty in question? Does it mean five decades or fifteen?

In some forms of the faculty this question can not arise, for it says expressly “fifteen decades of the Rosary.” But the meaning is the same even if the word “Rosary” alone is used, according to a response of the Holy Office, July 2, 1884, in reply to question 8.¹

¹ *Collectanea S. C. de P. F.*, n. 1622.

4. The case. Caius and Julius, priests, went off for the whole day on an excursion. They foresaw that they would not be able to say their Breviary on their return, so they intended to take it with them, but they both forgot it. Caius thought that in these circumstances he was bound to say his Rosary, for there was a faculty in the faculty sheet: “Of reciting the Rosary or other prayers, if they cannot carry the Breviary with them, or cannot recite the divine office because of some legitimate impediment.” Julius, on the contrary, said that the faculty was a privilege, which no one is bound to use. On their return home they submitted their difference to their rector. The rector while admitting that in such circumstances it is a very good thing to say one’s Rosary, yet will doubtless agree with Julius that there is no strict obligation to do so. For the Church imposes on priests the obligation of saying the Breviary, not the Rosary. And, as Julius said, the faculty in the faculty sheet is a favor, a privilege, which does not in this case impose any special obligation of using it out of charity or other extrinsic reason.

Sin

Case 1. The Elements of Sin

Thomas, recently placed in charge of a certain mission by the bishop, is of such a disposition of mind that he fears everything, perceiving difficulties and even sin everywhere. As often as he sits in the sacred tribunal to hear confessions, he is assailed by indecent thoughts and motions; when he applies himself to the study of moral theology, the same thing always happens to him. Several times during the day he repeats the resolution to die rather than consent; nevertheless, the temptations return and cling more tenaciously. He fears, moreover, that at least sometimes, although he had a firm will to expel temptations of this kind, he resisted negligently at the beginning. Finally, for recreation he read through a certain book treating profane love, although he foresaw most grave temptations and actually suffered them; nevertheless, he remained doubtful whether he consented or not. Hence it is asked:

1. What is deliberately entertained pleasure, what is joy, and what is desire?
2. By what stages does one arrive at sinful pleasure, and how is sin committed?
3. How is the species of sins of this kind discerned?
4. Just as the object of joy and desire must be disclosed in confession, must the object of deliberately entertained pleasure also be disclosed?
5. What judgment is to be made concerning Thomas's case?

SOLUTION

1. For the answer to this question see "Manual of Moral Theology," p. 149 and following.
2. By what degrees is sinful pleasure arrived at, and how is the sin committed?

The first stage on the road to sin is the apprehension of a sinful object by the intellect. We here suppose that this simple apprehension is not voluntary. The sinful object thus present in the mind naturally attracts the appetite and an indeliberate motion of the will toward the object is the consequence. Then the intellect notices what is going on and reflects that it would be wrong to consent to the inordinate motion. If consent be given after advertence to the wrongfulness of the object, sin is committed. So that there is no sin in the apprehension of a sinful object by the intellect, nor in the natural and indeliberate movement of the will toward that object which follows. Sin is committed by freely choosing something which is sinful, and this can not be done without previous advertence by the intellect to the sinfulness of the object.

3. How are the species of this sort of sin known and distinguished?

Sins are human acts, and acts are specifically distinguished by their object, so that the species of a sin is known by its object. The object in sinful desire is something wrong in the concrete, invested with certain circumstances without which the object can not exist in the concrete. Sinful desire, then, will contract the malice of the object, and that of any evil circumstances with which the object may be

invested. The same is true of joy about a sin committed in the past. Morose delectation in a sinful act as represented in the mind can prescind from certain circumstances which would invest the object in the concrete, and if it does so prescind from them, they do not form part of the object of the sinful delectation, and so they do not affect its malice.

4. Has the object of morose delectation to be made known in confession as the object of evil joy and desire has?

Yes, in itself; for otherwise the sin will not be confessed in its kind. Thus morose delectation in a thought of fornication is quite a different sin from morose delectation in a thought of revenge. Some theologians, however, admit an exception to this rule in the case of morose delectations of impurity. They point out that ordinarily in such sins it is not so much the object which attracts as the immodest pleasure which such thoughts ordinarily cause. This immodest pleasure gives unity to the sins of thought, even though their objects are different. This opinion relieves confessors of the irksome duty of asking for details about such sins in the confessional beyond the number and the kind in general. Detailed questions about the objects of such sins frequently could not be put without danger both to the penitent and to the confessor.¹

¹ Génicot, vol. i, no. 175.

5. The case. Thomas, a priest who has lately been put in charge of a mission, is of a timid disposition, and fears difficulties and sin everywhere. He is tempted by bad thoughts and feelings whenever he hears confessions, as he was when he studied moral theology. These temptations are not sins, for he does not consent to them. They probably come from his being afraid of them, and they will cease if he does not bother about them, and commits himself to God. Sometimes he is afraid that at least he was negligent in repelling them at once. We understand by repelling thoughts of this kind the turning away of the mind from them as far as possible. Thomas may have committed fault in this way, as it is difficult always to be prompt in rejecting such thoughts, but the negligence would not be more than a venial sin. In reading a novel for recreation, though he foresaw that serious temptations would be the result, he did not commit a sin unless he foresaw proximate danger of consenting to evil. This we must not presume in a man like Thomas. Afterward he doubts whether he gave consent to evil; as the presumption is in his favor he need not confess this. However, it will be better if Thomas will for the future seek his recreation where he is not likely to be troubled by thoughts and feelings which are always objectionable and dangerous.

Case 2. Curiosity Sinful

To Titius, who applies himself to the study of moral theology, knowledge seems to be good, and therefore the desire for it seems unable to be bad. Theologians, however, seem to teach otherwise when they hand down that curiosity is sinful. Thus, according to them, the reading of an indecent book, inquiry by young people about sexual matters, and an indecent look are sins, at least venial, if they proceed from curiosity; but to inquire of the dead about truth out of curiosity is mortal. In order that he may resolve these difficulties, Titius asks:

1. What is curiosity, and in what does its malice consist?
2. Is the desire or pursuit of a good object always good?
3. Let satisfaction be given to Titius and his difficulties.

SOLUTION

1. What is curiosity and in what does its malice consist ?

Curiosity, in the sense in which the word is used by theologians, is an inordinate desire of knowledge. As St. Thomas teaches (II-II, question 167, article 1), knowledge is good in itself, but it may be bad incidentally, as when it is the cause of pride. And although knowledge is good, yet the desire of knowledge may be inordinate and vicious. The desire of knowledge becomes vicious if the end for which it is sought is bad, as if one studies medicine in order to poison an enemy. Moreover, all knowledge is not equally important, and so a desire of knowing what is less useful is inordinate if it stands in the way of acquiring knowledge which is necessary. A law student who requires all his time to qualify for his examinations would do wrong if he spent two hours daily in learning Chinese. If the means taken to acquire knowledge are bad, the desire becomes inordinate. Thus, as St. Thomas says, it is unlawful to seek to know the future from demons. Fourthly, a desire of knowledge is inordinate if it leads one to try to learn what surpasses his powers.

2. Is the desire or pursuit of a good object always good?

No; in order that an action may be good, not only the object, but the end and all the circumstances must be good — good arises from an integral cause, evil from any defect whatsoever. The answer, too, is clear from what was said above.

3. The case. Titius, a theological student, thinks that as knowledge is good the desire of it can not be evil. This difficulty has been met already. It is clear that the desire of knowledge can be inordinate, and if it is inordinate, it is sinful. Theologians are right when they teach that curiosity is at least a venial sin and that it may be mortal. Thus the reading of an improper book out of curiosity, where there is not proximate danger of consenting to evil, is a venial sin; if the book is indecent and there is proximate danger of consenting to evil, it is mortal. Before the proper time youths should not think or talk about sexual matters, as thought and talk about such matters before the time leads to impurity. Hence to indulge curiosity about them in

talk, look, or reading, is at least a venial sin, and it becomes mortal if the danger of consent be proximate. To seek to know occult matters by calling up the dead is specially forbidden in Holy Scripture, and is mortally sinful.¹

¹ *Manual of Moral Theology*, vol. i, p. 218; Lessius, *De Justitia*, lib. iv, c. 4, n. 84.

Case 3. A Vocation Lost

Mary, a nun professed in a religious institute of simple vows, then learned for the first time that sexual pleasure in marriage is lawful; if she had known this before emitting her vows, she would never have vowed. She often conceives a desire to marry if it were lawful. At length, when her aging parents, having fallen into poverty, manifest by letter their will to enjoy her presence and assistance, Mary rejoices that an occasion has been offered to request a dispensation from her vows, which she accordingly requested from her confessor. When these things have been disclosed, the latter asks:

1. What kind of error invalidates vows?
2. Is the desire for a bad thing under the condition “if it were lawful” a sin, and of what kind?
3. Is it lawful to rejoice at another’s misfortune?
4. What can or ought to be done by the confessor in the case?

SOLUTION

1. What sort of mistake makes vows invalid?

Substantial mistake about the substance of the vow makes it invalid just as such a mistake makes other contracts invalid, for a vow is a promise made to God. Private vows are also rendered invalid if they were taken under a mistake about some accidental circumstance of great importance which was a principal motive for taking the vows, and probably even by a mistake about some accidental circumstance of less moment, if the mistake was such that the vows would not have been taken if the truth had been known. However, this probable opinion can not be applied to vows taken in an approved Religious Order, for such vows place the person who takes them in a fixed and permanent state of life, and only substantial mistake makes them invalid. Much in the same way marriage is a permanent state of life, and only substantial mistake can be admitted as a diriment impediment of marriage.¹

¹ St. Alphonsus, book iii, no. 198.

2. Is a desire of evil under the condition “if it were lawful” a sin, and of what sort ?

If the condition takes away the whole malice of the desire and it is not dangerous to entertain it, a conditional desire of evil is not sinful. Thus if on a Sunday I say, “I should like to stay at home to-day if the Church did not bid me go to Mass,” I do not commit a sin. This doctrine holds in matters of mere positive law. In matters which belong to natural law, where a voluntary inclination toward a wrongful act is sinful and remains sinful even under the condition “If it were allowed,” such conditional desires are wrong, and belong to the same species of sin as does the corresponding external act. Thus the conditional desire, “I should like to kill my enemy if it were lawful,” is a sin of the same malice as homicide; it is the expression of a movement of hatred for one’s neighbor which goes the length of desiring to take his life; the added condition “if it were lawful” does not annul this movement of hatred nor take away its malice.

3. Is it lawful to rejoice at the misfortune of another?

No; as it is uncharitable to wish evil to another, so it is uncharitable to rejoice at his misfortune. But it is not uncharitable to be glad that a misfortune has befallen my neighbor because thereby greater good accrued to him or to the public. In this case the object of joy is the good, not the misfortune, of one's neighbor.

4. The case. Mary, a nun, learned after profession of simple vows that venereal pleasure is lawful in marriage, and if she had known it before she would not have become a nun. We must suppose that Mary knew what chastity is when she took her vow. Her ignorance with regard to marital rights was not substantial mistake about her vow, nor did it render the vow invalid.

She often forms a conditional desire of marrying if it were lawful. In this Mary does wrong, for although such a desire is not wrong in itself, yet one in Mary's position can not foster such desires without exposing herself to temptations against her vow or against her vocation. How seriously Mary sinned in this would depend on the degree of danger to which she exposed herself.

Her parents become old and poor, and write to Mary that they desire her presence and help. If Mary can be of any real help to her parents, she has good reason for asking for a dispensation from her vows. If the necessity of her parents were extreme, she would be bound to go and help them; if it is grave, the question whether she is bound to go is disputed. At any rate if she can help them and relieve their necessity, she may ask for a dispensation from her vows, nor does she commit a sin in being glad of the opportunity. The confessor, however, can not grant her a dispensation; it will be his duty to consider her character and circumstances so as to be able to give her good advice. It might be that she would be useless to her parents, and would have no chance of marrying if she left her convent, in which case her confessor would advise her to stay in religion, and give what help she could to her parents with the permission of her superiors. But it might also be that, all things considered, it would be better if Mary returned to the world, and in that case the confessor would advise her how to ask for a dispensation from her vows.

Case 4. An Ambitious Lawyer

Titius, a layman of outstanding ability, was studying civil law; and, since he knew that he easily surpassed others, he hoped that he would acquire the highest honors and dignities, from which he could leave a great name to posterity. By a certain misfortune he failed in a case of great importance. Thereupon, ambition having been cast aside and reputation among others despised, he indulged in drunkenness and, if not an excuse for his vices, found at least some consolation in the sayings of ascetical writers about the vanity of the world and contempt for glory. Paul, a friend of Titius, indeed knows that Titius erred, but he finds it by no means easy to say, practically and theoretically, where virtue stands. Hence it is asked:

1. What is pride, and in what precisely does its malice consist?
2. What is ambition, and what kind of sin is it?
3. What is vainglory, and how is it distinguished from care for a good name?
4. Did Titius sin in these things, and how?

SOLUTION

1. What is pride and in what precisely does its malice consist ?

Pride is the inordinate love of one's own excellence. To acknowledge and to love in due measure the good qualities of soul or body or the gifts of fortune which one possesses is not pride; if such blessings are referred to their proper source, they become the grounds of a proper and becoming self-respect. Truth requires that we should esteem ourselves at our real value, and that we should attribute any good that we have to its true source, our Creator and Lord. If we leave God out of account and claim practical independence of Him, and magnify ourselves for the gifts which we possess or which we think that we possess, we become proud. Similarly inordinateness and pride make their appearance when we attribute the good that we have to our own merits, or when we affect to have more than in reality we have, or when we conduct ourselves as if we were the only persons who had such good things, and consequently look down with contempt on others. The malice of pride consists in so extolling oneself as to claim practical independence of Almighty God. The proud man does not like to acknowledge his indebtedness to God for all that he has; he does not like to submit to the ordinances of God or to those of legitimate superiors; he strives to shake off as far as possible the yoke of subjection which is the necessary condition of man inasmuch as he is a creature.

2. What is ambition and what sort of sin is it?

Ambition is an inordinate desire of dignities and honors. A moderate desire of dignities and honors for a good object is not vicious, but if the desire becomes immoderate, or the end in view is not good, or unlawful means are employed to attain honors, vicious ambition makes its appearance. It is a venial sin in itself, but it may be mortal on account of the means employed, or the end, or on account of injury done to one's neighbor.

3. What is vainglory and how is it distinguished from the care of a good reputation ?

Glory is knowledge by others accompanied by their praise.

It is natural and praiseworthy to seek by good deeds to deserve the esteem and praise of the good. "This is what is meant by a good reputation, and we are obliged to strive to acquire it and to preserve it when acquired, as the necessary condition for doing good in the world. The desire of being praised by others becomes the sin of vainglory when praise is sought for what does not deserve praise, or without due moderation, or for an improper object, or from those whose opinion is of no value.

4. Did Titius commit sin in the case, and if so, what sin?

Titius was a clever young man who studied law. He knew that he surpassed others in ability and aspired to the greatest honors and dignities, and thus he hoped to enjoy a great reputation with posterity. There is nothing that is necessarily vicious so far. He failed in a case of great importance, and disappointment caused him to give up his schemes for the future, to care nothing about his reputation, and to take to drink. He found some consolation if not excuse for his conduct in the sayings of ascetics about the vanity of the world and contempt for human glory. Here, of course, Titius did wrong in taking to drink, and he misapplied the sayings of ascetics. Ascetics warn us truly of the vanity of the world, and they teach us not to indulge in vainglory, but they do not tell us that we may throw away a good reputation. On the contrary, a good reputation is useful not only to others, but to the possessor of it as well, especially while his virtue is immature. Few can afford to rest on God alone; the many, who are good but imperfect, need the spur of others' praise and the fear of their censure in order to persevere in the difficult paths of virtue.

Case 5. Sexual Curiosity

Caius, a most innocent young man of sixteen years who is being educated in a certain Catholic college, one day comes upon an expurgated passage in a pagan author whom he studies. Thereupon, led by curiosity, he seeks another copy of the same book, in which he finds the complete passage. He reads it and finds described a fornication committed by a certain pagan god with a woman. Troubled and attracted by this reading, he thinks about the matter within himself and begins to suspect how human beings derive their origin, something of which he had previously been altogether ignorant. The young man, moreover, being exceedingly ingenuous, asks his teacher so that he may have certainty about the matter. The teacher consents, astonished at such innocence and suspecting that others in the class of about the same age are perhaps in the same state, and publicly explains to all of them the physiology of human generation. It is asked:

1. What is a bad thought, and what is required in order that someone may sin mortally by it?
2. Is thought about a bad thing sinful, and is anything to be noted particularly about thought concerning the matter of lust?
3. What is to be said about the manner of acting of Caius and of his teacher?

SOLUTION

1. What is a bad thought and what is requisite for a mortal sin of thought? A bad thought is either a desire to do something bad, or morose delectation in something evil as represented in the mind. All bad thoughts can be reduced to those two classes. Under bad desires are placed all internal sins which tend toward the doing of some evil. Under morose delectation come all internal sins which are consummated in the mind, and which do not tend to the accomplishment of some evil outside the mind. For a mortal sin of thought the object must be gravely sinful, and there must be clear advertence to the grave malice and full consent to it.
2. Is the thought of an evil object sinful, and is there anything to be specially noted concerning thinking about sins of impurity ?

The thought of an evil object is not necessarily sinful. If, for example, I think about a brutal murder which has been committed, I do not thereby commit sin. I should commit sin if I thought of it with pleasure and approbation, gloating over the hideous details, or rejoicing in the murder because the murdered man was an enemy of my own. Although it is not sinful to think of an evil object in itself, yet sometimes there is danger in such a thought, because it tends to excite a sinful appetite. Thoughts of revenge are of this class, and still more so thoughts of impurity. A thought about impurity may be either no sin at all, or it may be a venial sin, or it may be mortal. A thought about impurity is no sin at all if there is good reason for entertaining the thought, as when a priest studies moral theology, and there is not proximate danger of consenting to it or to any evil motions which arise from the thought. Venial sin will be committed when there is no good reason for thinking of the

bad object, and the danger of consenting to evil is not proximate. If this danger is proximate, mortal sin will be committed when the object is grievously sinful.

3. The case. Caius committed venial sin in indulging his curiosity, but as far as the case allows us to judge he does not seem to have committed mortal sin. After his curiosity was aroused the master acted rightly in briefly and clearly explaining to him the physiology of generation, but he should have told him not to think or talk about the matter with others, and he should have told him where the danger of sin lay. The master acted very imprudently in giving a public lecture on the subject in class; the few cases in which it would have done good had better have been treated privately. In other cases in all probability it would have done harm by needlessly directing attention to what should not be thought about except at the proper time, and by occasioning comment and talk about the matter among the boys, to their serious danger.

Case 6. Drunkenness

Titius had heard that voluntary drunkenness is not of itself and necessarily a sin, but only when someone gets himself drunk without necessity. Hence, when by misfortune he had broken his arm and was suffering the greatest pains from it, having no other remedy, he got himself drunk while the doctor who would treat the arm was being summoned. On another occasion, when for several nights he had taken scarcely any sleep, he got himself drunk and was sunk in a profound sleep for twelve hours. When he had also lost his dearest daughter by death and had fallen into great melancholy, he at length extinguished his grief by copious drinking to the point of drunkenness. Finally, when occasions of drunkenness were multiplying gradually and imperceptibly, moved by conscience he approached a confessor, who asks:

1. Is drunkenness intrinsically bad, and in what is its malice to be placed?
2. Is it lawful to make oneself or another drunk?
3. What is to be said concerning the case?

SOLUTION

1. Is drunkenness intrinsically evil, and in what is its malice to be placed?

Yes; drunkenness is intrinsically evil, or, in other words, it is inordinate and wrong in itself; it is not wrong merely because it is prohibited. Its malice more probably does not consist in any single element, but in several. It consists in voluntarily depriving oneself of the use of reason for a considerable time by drinking intoxicating liquor to excess without good cause. The malice of drunkenness, then, does not consist merely in depriving oneself of the use of reason; we may do that both naturally in sleep and artificially by using an anesthetic for a good reason. Probably, at least, a man bitten by a poisonous snake may make himself drunk by way of antidote. But without sufficient cause to deprive oneself of man's noblest attribute by worse than brutish excess in drinking intoxicating liquor is inordinate and wrong.

2. Is it lawful to make oneself or another drunk?

These are disputed questions among theologians. According to St. Alphonsus¹ a man may take intoxicating drink in order to expel bad humors from the body, even though he foresees that the drink will deprive him of the use of reason, but he may not take it to make himself drunk, for that is always intrinsically evil. However, other theologians, in keeping with what was said above, allow a man to make himself drunk for a sufficient reason. The only question will be about the sufficiency of the reason. As to the question whether it is lawful to make another person drunk, St. Alphonsus acknowledges that the opinion is probable according to which one may make another drunk even with his knowledge when it is the only means available to prevent him from committing a still greater sin on which he is determined.²

¹ Book v, no. 76.

3. The case. Titius had heard of the theological doctrine that drunkenness is not always and necessarily sinful, but only when a man gets drunk without sufficient reason. He applied the doctrine first when he broke his leg and suffered great pain. Having no other remedy at hand, he made himself drunk till the doctor came and set the limb. Titius may be excused for this. On another occasion when he had got scarcely any sleep for several nights, he made himself drunk and slept for twelve hours. Some theologians would excuse Titius from sin in this case also; but it is preferable to say that he should consult a doctor, or take exercise in the fresh air, or adopt some other remedy, as taking drink in excess for sleeplessness would almost certainly lead to abuse, and therefore it must be forbidden.

In taking drink to drown his sorrow for the loss of a dearly loved daughter Titius committed sin. For such spiritual evils spiritual remedies should be used, or at least not such remedies as getting drunk; otherwise terrible abuses would creep in and have to be condoned. The confessor therefore will know what to say to Titius, whose wrong application of a right principle led to abuse in his own case.

Case 7. The Philosophic Sin

To Caius, a priest, it seems that theologians, even recent ones, do not sufficiently weigh the circumstances in which the less instructed among the faithful especially live today when they discuss the malice of sins. For very many have from infancy been so accustomed to sins of drunkenness and lust and to the omission of Mass on days of obligation that they regard these and other things as almost nothing. Added to this are bad habits contracted from infancy which blind the conscience and weaken the will. Moreover, such persons scarcely ever think about God except perhaps when they come to church, and therefore, even if they act badly, they do not intend to offend God with the danger of eternal punishment. Led by these reasons, Caius imposes an altogether light penance upon the less instructed who confess such things and readily dismisses them absolved. Hence it is asked:

1. What is mortal sin, and what is required and sufficient for sinning mortally?
2. Is there such a thing as a philosophic sin?
3. Is there invincible ignorance of the natural law and of the obvious obligations of one's own state?
4. What is to be said about the theory of Caius and his manner of acting?

SOLUTION

1. What is mortal sin and what is necessary and sufficient in order to sin mortally ? A mortal sin is a grievous offence against Almighty God, a turning away from God, our last end, and a preferring of some creature to Him. It robs the soul of the grace and friendship of God which constitute its life. It causes the spiritual death of the soul, and on this account it is called mortal. If a man dies while in the state of mortal sin, he can not enter heaven without the wedding garment of God's grace, and he will be condemned to eternal punishment in hell.

To sin mortally three conditions are necessary and sufficient. The matter must be serious, that is, the act done must be notably inordinate and wrong; it must be a serious disturbance of right order in itself, or because it is contrary to a grave precept imposed by a legitimate authority. At the time when the sin is committed the sinner must clearly know and advert to the malice of his action. This does not mean that he must reflect expressly on the fact that he is doing wrong, or that he is offending God, or that he is doing something that deserves hell. A man who does not expressly think of God or of hell can certainly commit mortal sin. It means that he is fully conscious of what he is doing and that he knows that it is seriously wrong. He may not realize the consequences of his act; what sinner ever did realize the terrible consequences of mortal sin? Moreover, there must be full consent given to the act. A mere hesitation or dallying with the temptation is not sufficient; there must be full and perfect consent to what is known to be seriously wrong.

2. Does philosophic sin exist ?

By a philosophic sin is meant an act against right reason without being an offence against God. Alexander VIII, on Aug. 24, 1690, condemned the following proposition: "A philosophic or moral sin is a human act at variance with a rational nature and right reason; a theological and mortal sin is a free transgression of the divine law. A philosophic sin, however grave, in him who is either ignorant of God or does not actually think of God, is a grave sin indeed, but it is not an offence against God, nor a mortal sin depriving the sinner of the friendship of God, nor deserving of eternal punishment." A sin, therefore, which is seriously against a rational nature and right reason is also an offence against God which robs the sinner of God's grace and merits the punishments of hell. Implicitly contained in the judgment of the sinner that an act which he performs is against right reason and wrong, is another judgment that it is against the law of God; for right reason applied to moral action is nothing but a participation of the eternal law of God which commands right order to be observed, and forbids it to be disturbed. Therefore, there is no such thing as a merely philosophic sin.

3. Is there such a thing as invincible ignorance of the natural law and of the ordinary obligations of one's state of life?

Among people who have the use of reason invincible ignorance of the general principles of morality, such as are contained in the Decalogue, can not be admitted. No human society could long hold together unless those general principles were known and ordinarily acted upon. The same is true of the ordinary obligations of one's state of life. Invincible ignorance about the application of those general principles in particular circumstances and cases exists not only among the less instructed but among the better instructed also. Hence the variety of opinions among moral theologians.

4. The case. Caius, a priest, thinks that moral theologians do not take sufficient account of the circumstances in which the faithful of the humbler sort live in our days. Very many are so accustomed from childhood to sins of drunkenness, lust, and neglect of Sunday Mass, that they scarcely think anything of them; they contract bad habits in childhood which blind their consciences and weaken their wills; besides, such people scarcely ever think of God except perhaps when they come to Church, and so even if they do wrong, they do not intend to offend God with danger of eternal punishment. For these reasons when such people confess such sins to him Caius imposes a light penance and absolves them without difficulty.

Caius is wrong in acting in this way, and instead of helping his penitents to lead better lives he will probably make them think still less of sin and commit it readily. What he says is unfortunately true of large numbers in our towns. Their antecedents and surroundings have much to do with their sad condition. Still the fact that many in the same circumstances lead very good lives shows that even their wretched surroundings do not deprive them of the power of being good if they choose to be so. We know that unfortunately men may know very well what sin is, and yet drink it in like water. From what was said above it is plain that to commit sin it is not necessary to think expressly of God or of the punishments of hell; it is sufficient if they know that what they do is seriously wrong. They may be partly excusable on account of their surroundings; how far can be known only to God. Caius, however, should change his method of dealing with them; he may be as considerate and kind as he can be; but he should be a more faithful dispenser of the mysteries of God. As the Council of Trent teaches, he should impose penances which are salutary and have some proportion to the number and gravity of the sins confessed, and try to arouse in his penitents a hatred and detestation of sin. Of

course he must also be on his guard against frightening such penitents away from the sacraments by imposing penances that are too severe for them.

Case 8. The Specific and Numerical Distinction of Sins

Caius, a young Catholic and a member of a certain secret society, receives a command from its head to kill Tullius, a traitor to the society. In order to do this, he seeks the place where Tullius lives, attaches himself to him as a companion, and investigates everything about his manner of life so that he may perpetrate the crime more easily and safely. Nevertheless, more than once, led by remorse of conscience, he determines to leave the business unfinished and, in order to provide for his own life, to flee the country. Nonetheless, he prepares weapons and at length, some weeks after undertaking the purpose, especially because of a deed discovered by him which renders Tullius exceedingly hateful to him, he provokes Tullius to a quarrel in a secret place and kills him. Hence it is asked:

1. How do sins acquire various species?
2. How are sins distinguished with regard to number?
3. What things must Caius mention in order to confess integrally?

SOLUTION

1. See the answer to this question in *Manual of Moral Theology*, vol. i, p. 141.
2. The answer to this question is in *Manual of Moral Theology*, vol. i, p. 143.
3. What particulars of his crime must Caius mention so as to make a full confession ?

Caius, a young Catholic who belongs to a secret society, received orders from its head to kill Tullius, who had betrayed its secrets. To execute the mandate Caius found out where Tullius lived, made his acquaintance, and studied his manner of life, in order to be able to kill him with greater security and ease. More than once he determined not to commit the crime and to fly the country. However, he bought weapons, and at length after some weeks, especially on account of having found out something about Tullius which made him an object of great hatred to him, Caius provoked him to a quarrel in a lonely place and killed him. Caius must, of course, confess that he has committed homicide, and he must say as far as he can how often he changed his mind about committing the crime, for such changes of resolution will break up the sin into as many smaller ones as there are changes. He need not mention any other circumstance, for the means which he took to commit the crime were indifferent in themselves and only gave unity to the internal intention. The grave hatred, too, is sufficiently confessed by confessing the murder itself, which is a mortal sin against charity, unless before the murder was committed and on other occasions the hatred was manifested in ways which had nothing to do with the crime which followed, for then there would be as many different sins of hatred as there were different manifestations of it. The quarreling which immediately preceded the murder formed part of the final crime and need not be distinctly and separately confessed.

Faith

Case 1. Masculine and Feminine Virtues

Titius, a young Catholic who was devoting himself to medical studies, was accustomed to hear everything called into doubt by his companions. One among them openly asserted that pagan morals were preferable to Christian morals, and handed Titius—who defended the contrary with all his strength—a book by a celebrated author in which the following words are read: “In antiquity the virtues that were most admired were almost exclusively those which are distinctively masculine. Courage, self-assertion, magnanimity, and, above all, patriotism were the leading features of the ideal type; and chastity, modesty, and charity, the gentler and the domestic virtues, which are especially feminine, were greatly undervalued. . . . The change from the heroic to the saintly ideal, from the ideal of Paganism to the ideal of Christianity, was a change from a type which was essentially male, to one which was essentially feminine. . . . Pagan sentiment was chiefly a glorification of the masculine qualities of strength, and courage, and conscious virtue, while Christian sentiment is chiefly a glorification of the feminine qualities of gentleness, humility, and love.”¹ Since Titius had no answer to make, he approached a priest who was his friend and asked for help with the difficulties. Hence it is asked:

1 W. H. Lecky, *European Morals*, vol. ii, pp. 382–384.

1. Is self-assertion a virtue?
2. What is to be said about the pagan conception of magnanimity?
3. Can the distinction between masculine and feminine virtues be admitted, and can the Christian religion be said to favor the latter?

SOLUTION

1. Is self-assertion a virtue?

Self-assertion may be understood merely in the sense of defence of one’s own rights and opinions, and in this sense it seems to belong to the virtue of fortitude. But like self-love, which generally implies excess, self-assertion ordinarily means the thrusting of oneself forward unduly, the tendency of a masterful and ambitious character. In this sense it is a vice, and belongs to pride, ambition, or vainglory.

2. What is to be said of the pagan idea of magnanimity ?

Aristotle describes the magnanimous man in a celebrated chapter of the *Ethics*.¹ The magnanimous man, according to Aristotle, has great gifts and great natural virtues, but these are all spoiled by pride. He is fully conscious of his merits, he considers them his own, without referring them to God, and claims for them great honor as due to himself from men. He knows how inferior other men are to himself, and despises them. Magnanimity has to be seasoned with the Christian doctrine about God and man’s relation to Him, the foundation of Christian humility, before it can become a Christian virtue. This is admirably done by St. Thomas.²

1 Book iv, chapter 3.

2 II-II, question 129.

3. Can the distinction between masculine and feminine virtues be admitted, and can it be said that the Christian religion favors the latter?³

3 Compare *Catholic Encyclopedia*, under the word "Honor."

A virtue is nothing but a habit of well-doing, and as both men and women should have, and practise, all the virtues, no distinction can be admitted between masculine and feminine virtues. The type of Christian perfection is Christ Himself, in Whom all virtues are seen in their fullest development and luster, and as both men and women are bound to form themselves after the model which He set them, it cannot be said that Christianity favors the gentler at the expense of the robuster virtues. The Christian type is a harmonious blending of the gentle and robust virtues; a Christian hero, like St. Louis of France, shows the combination in all its perfection; he is gentle and humble, but he is also strong and high-minded; in a heroine like St. Teresa, we have the same harmonious blending in a female saint. This element of truth in Lecky's observations may be conceded — the Christian religion insists on meekness, humility, chastity, and charity, and defends the weak; while Paganism was too indulgent and condescending to brute force and strength. But while insisting on the gentler virtues, Christianity by no means forgets the more virile. Perhaps it may be allowed, too, that as man still remains to a great extent a savage, the virtues of courage, fortitude, and others of the same kind do not need to be insisted on so much. Perhaps the tendency of unregenerate human nature is to admire them too highly, and so it is not advisable for Christian teaching to stress them as well.

Case 2. Dispositions of Converts

Caius, a missionary priest who is very busy, received several non-Catholics into the Church. He does not labor to instruct them before reception; rather, after a catechism has been given and some instruction received from certain lay people, when they declare that they understand the catechism and wish to be received into the Church, he receives them immediately without delay, saying within himself that the less instructed especially cannot understand difficult questions about the motives of credibility of the Catholic religion, and that they will gradually understand everything necessary. Nevertheless, because of certain things recently discovered by him, he is troubled by scruples about this manner of proceeding, and indeed about the lawfulness of administering the sacraments to some of them; for he heard one of his converts say that he had entered the Church led only by greater probability and that afterward he had not attained greater certainty. Hence it is asked:

1. What dispositions are required in order that non-Catholics may be received into the Church?
2. What motives of credibility of the Catholic religion are required and sufficient so that the less instructed especially may be able to embrace the faith?
3. Is it lawful to absolve one who doubts about the faith?
4. What is to be said concerning the case?

SOLUTION

1. What dispositions must non-Catholics have to be received into the Church?

They must believe with a firm faith all that the Catholic Church proposes to be believed, and they must have the purpose of performing all the duties which are of obligation for Catholics. With regard to the faith, it is not sufficient to believe everything implicitly. It is necessary as a means of salvation to believe explicitly that God exists, that He is a rewarder of them that seek Him, and probably also the mysteries of the Blessed Trinity and of the Incarnation. It is of precept to believe explicitly the articles of the Faith contained in the Creed, the sacraments which the faithful are under the obligation of receiving, the Lord's Prayer, and the precepts of the Decalogue and of the Church. Hence the necessity of instruction in all these matters.

2. What motives of credibility of the Catholic religion are necessary and sufficient so that especially the illiterate may be able to embrace the Faith?

The Council of the Vatican teaches that miracles and prophecy are motives of credibility which are suited to the capacity of all. The existence, history, and fertility in good of the Catholic Church is also a motive by itself for embracing and persevering in the Faith, and it is suited to the capacity even of the illiterate. The motives should be such as to render the Catholic religion evidently credible, and, moreover, such as can not be displaced by future experience or learning. On this account, although motives which are respectively sufficient to produce moral certainty in illiterate minds, though not in

others, might be sufficient to enable the illiterate to make an act of faith, yet even the illiterate should be furnished with something more solid and stable before being admitted into the Church.

3. Is it allowable to absolve one who doubts about the Faith?

No, it is not. If he positively doubts whether some article of the Faith is true, he is a heretic. If he doubts negatively or suspends his assent, he sins gravely against the Faith, and can not be absolved as long as he remains in that state.

4. The case. Caius, a missionary priest and a busy man, received many converts into the Church. He did not take great pains in their instruction, but gave them a catechism, and after they had received a certain amount of instruction from some pious lay people, on their declaring that they knew the catechism and wished to be received into the Church, he received them, saying to himself, that the illiterate especially could not understand difficult questions about the motives of credibility of the Catholic religion, and that they would by degrees learn all that was necessary.

In this Caius made a mistake. It would have been better to receive a few converts well instructed than many badly instructed. Ignorance of their religion is one of the causes why so many Catholics lead un-Catholic lives, and profess such un-Catholic sentiments. Many ill-instructed converts leave the Church when difficulties arise. Caius should, at least, see that his converts have a good knowledge of the catechism. It is not necessary for them to go into difficult questions about the motives of credibility, but they should have some clear idea why they wish to become Catholics, and in some way that reason should be reducible to one or other of the ordinary motives of credibility.

Caius began to have scruples about his method of dealing with converts when he heard one of them say that he came into the Church because he thought that more probably it was the true Church of God, and that he has never had greater certainty than that. Caius had reason to be troubled, for this convert had never been a Catholic at all, inasmuch as he never had the Faith, as we gather from the twenty-first proposition condemned by Innocent XI: Supernatural assent of faith useful for salvation stands with merely probable knowledge of revelation, even with a fear by which someone fears that God has not spoken. Caius may not administer the sacraments to such as these until they are better instructed and until they firmly, without any doubt, believe the Catholic faith.

Case 3. External Profession of the Faith

Caius, an Anglican minister who was dying, summoned Titius, a Catholic priest, and asked to be received into the Catholic Church, which he firmly believed to be the one Church of Christ. As to other matters, Titius found him excellently disposed; nevertheless, he wished absolutely that his reception into the Church be kept secret, lest his wife and children be deprived of the pension to which widows of Anglican ministers have a right. Titius, however, doubted whether he could receive him under this condition or not. Hence it is asked:

1. Is it ever lawful to deny the faith?
2. Must the faith be professed externally, and when?
3. What must be done in the reception of converts?
4. What is to be said concerning the case?

SOLUTION

1. Is it ever lawful to deny the Faith?

No, it is never lawful to deny the Faith: “He that shall deny Me before men, I will also deny him before my Father who is in heaven.”¹

¹ Matt. x. 33.

2. Must the Faith be openly professed, and when?

Yes, it is at times necessary to profess the Faith openly; it is not sufficient to believe merely internally. This is required by the natural and divine law, as well as by positive law. A solemn profession of faith must, by positive law, be made by converts on their reception into the Church, by bishops at their consecration, by priests at their ordination, and by certain ecclesiastical functionaries on their assumption of office. We are chiefly concerned in this case with profession of faith which is required by natural and divine law. Like all positive precepts it always obliges, but not for always; in other words, there are certain occasions when the precept must be fulfilled; it does not oblige on all occasions whatever. The general rule is that the Faith must be openly professed whenever the honor of God, the spiritual good of one's neighbor, or one's own good requires it.

3. What is to be done in the reception of converts?

Inquiry must first of all be made about the baptism of the convert, he must be instructed, and where the bishop requires it, the leave to receive him must be obtained from the bishop. If the convert has not been validly baptized, he is only required to make a profession of faith, and he is baptized according to the Ritual with the longer form, unless an indult has been obtained to use the shorter form prescribed for infants. If he was baptized before, but the validity of the baptism is doubtful, he must make a profession of faith, and then conditional baptism is conferred (in England privately with

holy water and without the ceremonies); then he is conditionally absolved from censures, and after making a general confession of his whole life he receives sacramental absolution conditionally. If he was validly baptized, he makes profession of his faith, is absolved from censures, and then makes his confession and is absolved. Youths before puberty are not absolved from censures.

4. The case. Caius, an Anglican minister, called Titius, a Catholic priest, and asked to be received into the Church. Caius was dying. Titius found him well disposed in other respects, but he desired that his conversion should be kept secret for fear lest his wife and children should be deprived of a pension to which they would have a right as the widow and children of an Anglican minister. Titius doubted whether this could be allowed.

No; Caius could not be received on that condition. The conversion of one in his position is likely to give great honor to God and to the true religion, and to be a cause of conversion to others.¹ In all probability the society which granted such pensions as are mentioned in the case would never dream of depriving Caius' widow and children of theirs because of his conversion on his death-bed. Perhaps, through some friendly source, assurance on this point could be obtained and communicated to Caius, who might then be received unconditionally.

¹ Cf. *Collectanea S. C. de P. F.*, nn. 44, 84. 2d ed.

Case 4. An Oratorio in an Anglican Church

In a certain town, when the Anglican elementary schools needed money, the Anglicans decided to sing, on a certain Thursday in their church, the oratorio which is called *Messiah*, to the hearing of which the people would be admitted for a price, and the proceeds would be applied to the needs of the schools. But since the Anglican singers were not sufficient, they asked certain Catholics, among others Caius, to furnish help.

To Caius, who asked whether any religious function was to be performed at the same time, the reply was made that the Anglican minister would pour forth a general prayer at the beginning, and that nothing else besides *Messiah* would be done. Caius does not wish to deny help to his fellow citizens, especially since they themselves often help Catholics; nevertheless, he does not know whether in this case it is lawful to assent to the request. Hence it is asked:

1. What is participation in sacred rites, and to what extent is it prohibited with heretics?
2. Is it lawful to cooperate in promoting a false religion?
3. What is to be said of the case?

SOLUTION

1. What is participation in sacred rites with heretics, and how far is it forbidden?

Participation in sacred rites means joining in religious functions, rites, ceremonies, with heretics and non-Catholics generally. Such an act is in general prohibited by divine and natural law as well as by positive ecclesiastical law. God has established one form of worship. He desires men to use that form when they worship Him; any other worship is displeasing to Him. That form of worship is used exclusively in the Catholic Church, the only true Church of Christ. For a Catholic, then, to take part in non-Catholic worship of God is to commit a sin against religion and the Faith. Such an act is also likely to cause scandal, and is wrong on this account. Moreover, the Church's positive legislation must be considered. Heretics and schismatics are excommunicated, or cut off from communion with the faithful. Before the Council of Constance (1414) the faithful were forbidden to hold communication with heretics either in religion or in civil matters. By a decree of that Council (*Ad Evitanda*) Catholics were allowed to communicate with heretics as far as ecclesiastical law is concerned, unless such heretics had been censured by name. Heretics censured by name are to be avoided still, at least in all religious matters; intercourse is allowed with others who are tolerated, except in so far as divine and natural law forbids it.

2. Is it lawful to co-operate in furthering the cause of a false religion?

It is never lawful to co-operate formally with such a cause; but to co-operate materially with it is not wrong, provided that there be a sufficiently grave cause, provided that what is done is not in itself wrong, and provided that the intention be good.

3. The case. The Anglicans in a certain town determined to perform Handel's *Messiah* in their church on a Thursday, and to admit the public on payment, in order to provide funds for the Anglican elementary schools of the town. They had not sufficient singers, and they asked Caius, a Catholic, to help them. They told Caius that there was to be no religious function besides a general prayer offered by the parson at the commencement of the oratorio. As the Anglicans have often helped Catholics in similar circumstances, Caius would like to help them in return if it is not wrong.

It is better to avoid taking any part in non-Catholic functions which in any way are connected with religion as far as possible. All the more must this be done, if scandal would be caused by such action. In some countries and circumstances such an action would be considered as a favoring of heretics and wrong; and in some it would be forbidden by positive law. This being supposed, let us see whether Caius is bound, under pain of sin, to refuse his help, supposing that there would be no scandal, and that there is no special prohibition of the Church, as might easily be the case in countries like England. Under these circumstances, we think that Caius might take part in the oratorio without committing sin. The object is to provide funds for Anglican elementary schools, but such an object is not directly religious. Caius takes no part in any distinctively Anglican religious service. His reason is, because he wishes to make a return for a similar service.

Case 5. Joining in Non-catholic Religious Rites

Titius, a missionary priest, is asked by Paul, a man most highly regarded among the parishioners, whether it is lawful for Catholics to be present at the weddings of heretics. For Paul has been asked by a most eminent friend, although a non-Catholic, to permit his daughter to stand as bridesmaid at the marriage of the latter's daughter. Before giving an answer, Titius consulted recent authors, some of whom appear to permit it, while others affirm it to be unlawful. Hence Titius asks:

1. What is participation in sacred rites with heretics, and to what extent is it lawful or unlawful?
2. Is it lawful for Catholics to enter the churches of heretics and to be present at their marriages?
3. What is to be said of the case?

SOLUTION

1. See the answer to this question, p. 147.
2. Are Catholics allowed to visit non-Catholic places of worship, and to be present at non-Catholic marriages in such places?

Catholics are not allowed to visit non-Catholic places of worship whenever such visiting is looked upon as an adhesion to, or as a favoring of, a false religion, or when it causes scandal, or danger of perversion, or when it is forbidden by lawful authority. In other cases, it is not unlawful. With regard to being present at marriages in non-Catholic places of worship, as a general rule it is not allowed, but for a good reason it may be tolerated if there is no scandal, no danger of perversion, nor contempt of ecclesiastical authority, as the Holy Office answered, Jan. 14, 1874.¹

¹ *Collectanea S. C. de P. F.*, n. 1410. 2d ed.

3. The case. Titius, a missionary priest, was asked by Paul, one of the principal members of his congregation, whether Catholics may be present at non-Catholic marriages. Paul asks the question because he has been requested by a non-Catholic friend who holds a high position to allow his daughter to act as bridesmaid, on the occasion of his own daughter's marriage. Titius finds that recent authors are at variance on the point. Marriage celebrated in a non-Catholic place of worship is a religious rite, and so, inasmuch as Catholics are not allowed to take part in non-Catholic religious rites, they may not take part in such a marriage. Under the conditions mentioned above it is tolerated that Catholics should be present merely materially and passively, as onlookers at the function, as an act of courtesy. But a bridesmaid takes part in the function, and so such an action goes beyond what is allowed. This is confirmed by an answer given by the Sacred Congregation for the Propagation of the Faith, March 12, 1789, that it not lawful for a Catholic to act as best man in a marriage of Greek schismatics.² However, an instruction of the Holy Office, June 22, 1859, allows a non-Catholic to act as best man in a Catholic marriage.³

² *Collectanea S. C. de P. F.*, n. 600. Cf. Tanquerey, *De Fide*, n. 681.

3 *Collectanea*, n. 1176.

Case 6. A Too-accommodating Matron

Mary, a good Catholic, acts as matron in a certain orphanage. She indeed frequents the Catholic church, but she is asked by the Anglican minister, who conducts divine service for the Anglicans in the orphanage itself, to assist and sing in that service, since she enjoys an excellent voice and the service is celebrated after Mass. Mary consents; and when she notices that not all the Anglicans in the house are present at the service, she afterward exhorts them to be present, and thus wins the minister's favor to the greatest extent. But when she read a certain book about indifferentism, she conceived scruples about these things, and therefore questioned her confessor concerning their lawfulness. Hence it is asked:

1. To what is a Catholic bound by reason of the faith's being professed externally?
2. What is cooperation with another's sin, and to what extent is it unlawful?
3. What is to be said of the case?

SOLUTION

1. See this question answered, p. 144.
2. What is co-operation in another's sin, and how far is it unlawful?

Co-operation, in general, is the helping of the principal agent in the doing of an action. Hence one who helps another to commit sin co-operates with him in that sin. This co-operation is formal or material. There is formal co-operation when help is given to do what is sinful and what can not be done without sin. Co-operation is material when help is given by doing something which is not sinful in itself, but which the principal agent abuses in order to commit sin. Formal co-operation in another's sin is never lawful; material co-operation is lawful when the action of him who co-operates is good, or at least indifferent, and when there is a sufficient reason for the co-operation proportionate to the evil co-operated in, and to the closeness of the co-operation.

3. The case. Mary, a Catholic, is matron in an orphanage. She goes to the Catholic Church, but is asked by the Anglican minister, who conducts the Anglican service in the orphanage, to sing at the service, as she has a good voice, and the service is held after Mass, so that it will not prevent her going to her own Church. Mary consents, and still further conciliates the minister by urging all the Anglicans in the house to attend the service. From reading a book on indifferentism, she gets a scruple about the lawfulness of these actions, and asks her confessor about them.

Her confessor will tell Mary that she had done wrong, although she was excused on account of her good faith. She did wrong in taking part in non-Catholic religious services, for, as we saw above (p. 148), all such action is wrong. In urging others to join in Anglican worship, which she knew or ought to have known to be false, she also did wrong, although, of course, Anglicans, believing in it in good faith, join in it without committing sin. Mary should allow the inmates to follow their consciences

with regard to their religious duties, and she should see that the time allowed for this purpose in the institution is not interfered with, but for the rest she should leave them alone.

Charity

Case 1. Almsgiving

Titius, a workman who lived in a certain town, had sought in vain for several weeks for work by which he might support himself and his family. The money which he had was already spent, and the family lived on food given by a certain good woman. Yet for several weeks no rent due to the landlord on account of the letting of the house had been paid, and unless it is paid this Saturday, the house will have to be left. Since Titius knew that other housing could scarcely be obtained by a poor man, he went to Caius, a sufficiently wealthy Catholic to whom he was known, and asked him to help toward paying the rent. Caius, however, refused, on the ground that the poor rates were already sufficiently heavy and because he had determined with himself that he would never give alms unless it were necessary for saving someone's life, since it is established that most beggars are pretended poor persons. But afterward, touched by a scruple because he knew that Titius was placed in true necessity, Caius asked his confessor whether in such a case he was bound to give alms. Hence it is asked:

1. To what does charity oblige in general?
2. What is the obligation of giving alms, and of what kind is it?
3. What is to be said of the case?

SOLUTION

1. To what in general does charity oblige us? Charity, in general, obliges us to love God above all things, for His own sake, and our neighbor as ourselves, for the sake of God. Love here does not designate a feeling, but an act of the will by which we are determined to cling to God and not to be separated from Him by sin, because we esteem Him above all other things whatever. The first material object of charity is God Himself; the second is our neighbor. Charity for our neighbor obliges us to both internal and external acts. Internally we are bound by the law of charity to wish well to all, to pray for all, and never to allow ourselves any thought, word, or deed, to the injury of any one. This internal love shows itself in deed by helping our neighbor in his necessities as far as we can.

2. Of what sort is the obligation to give alms?

Alms is help given to the indigent in their necessity, and that there is an obligation to help the indigent as far as we can follows from the nature of charity, and from the express words of Holy Scripture in many places.¹ In order to measure the gravity of this obligation, we must consider the necessity in which he who is to be helped is placed, and the capacity of helping him of the person who is to be bound by the obligation. Theologians distinguish three degrees of necessity. A poor man is in extreme necessity when he is in danger of dying from starvation, and can do nothing to help himself. If one is in the same danger, but can, with difficulty, do something to help himself, he is in grave necessity. Ordinary beggars are in common necessity. The goods out of which alms can be given are either necessary for the support of one's own life and the lives of those who are dependent on us,

or are necessary to live in the style suitable to one's condition in life, or they are superfluous. As a general rule, we are bound to give alms only out of our superfluity. This obligation is grave when we find a neighbor in extreme, or in grave necessity; in the common necessity of another it is probably only light.

¹ Compare 1 John iii. 16.

3. The case. Titius was a workman in a certain town, but he had been out of work for several weeks. All his savings had been spent, and his family lived on food given them by a good neighbor. The rent for his house was in arrears and the landlord gave him notice to quit unless the rent was paid by the end of the week. He knew that there was little chance of getting other lodgings in the circumstances, so he went to Caius, a well-to-do Catholic to whom he was known, and asked him for help toward paying his rent. Caius refused on the ground that the poor rates were heavy and because he had made a resolution never to give alms unless to one in extreme necessity. However, Caius was afterward uneasy about what he had done and asked his confessor whether there was an obligation to give alms in such a case.

His confessor will doubtless tell Caius that there is a grave obligation to give alms in such a case as is here given. Titius and his family were in grave necessity, as they were in danger of being thrust out of their home without the prospect of being able to find lodgings elsewhere. Caius knew that this case at any rate was genuine. There was no indication of the help required being obtainable from some other source. Caius could afford what would have been sufficient to relieve the distress of Titius. Under these circumstances Caius was strictly bound by a grave obligation to help a poor fellow-Catholic.¹ The reasons why some theologians allow that grave sin may not be committed by refusing alms in such cases are excluded by the circumstances of this case. It is no excuse to say that the man and his family might have gone to the workhouse. A respectable workman would not unfrequently rather die than subject himself and his family to such a disgrace and moral danger, and such feelings claim our respect and consideration.

¹ Compare Matt. xxv. 42.

Case 2. Scandal

Julius, an English commander in India, when he saw that very many soldiers were being rendered unfit for war because of venereal diseases contracted from common prostitutes, expelled from the camps all the prostitutes infected with disease, and asked Caius, a subordinate officer and a Catholic, to provide healthy women for the use of the soldiers. Although Caius knew that according to the laws of the army Julius could not enforce the command, he acquiesced and procured several healthy women. Wounded and returned to England, while confessing to a priest, he asked whether he had acted lawfully. Hence it is asked:

1. What is the sin of scandal, and how are direct and indirect scandal distinguished?
2. Whence arises the obligation of abstaining from scandal, especially direct scandal?
3. Is it the sin of scandal to induce to sin someone already prepared for it?
4. What is to be said of the case?

SOLUTION

1. What is the sin of scandal and what is the difference between direct and indirect scandal ?

Scandal is any word or action having at least the appearance of evil which is the occasion of sin to another. When another's sin is intended by him who gives scandal, this scandal is direct; when it is foreseen but not intended, it is indirect.

2. Whence arises the obligation of abstaining from direct scandal especially ?

We are obliged to abstain from giving scandal in the first place because it is against charity, and against the special obligation of fraternal correction which has its root in charity. He who gives scandal is the cause of sin to his neighbor, whereas he should do what he can to prevent the sinner from falling into sin, and to recover him when he has fallen. Direct scandal is also against that special virtue which is violated by him who sins through scandal. Thus he who incites another to drink to excess sins against charity and against temperance.

3. Is the sin of scandal committed by one who invites another to sin who was already determined to commit that sin?

St. Alphonsus teaches that at least with regard to those things that are intrinsically evil, such as fornication, the sin of scandal is committed by inviting another to execute what he was already determined on doing. The reason is because the execution of an evil purpose constitutes with that purpose a complete and perfect sin, distinct in species from the merely internal and habitual intention of sinning.¹

¹ St. Alphonsus, book ii, treatise 3, no. 47.

4. The case. From the answer to the last question it is clear that Caius was not justified in acting as he did. His superior officer had no authority to give him such an order according to the regulations of the British army, and in any case Caius could not execute it without committing sin. In reality he became procurer for the soldiers. This solution does not preclude the medical examination of prostitutes so as to guard against the infection of the soldiers.

Case 3. Scandal and Co-operation

Agatha and Lucy, the former a Catholic, the latter an Anglican of the church called High, were joined to one another by the bond of friendship. They often helped each other in works of charity; indeed, not rarely Lucy brought help to Agatha in works of religion, and in particular acted the part of a saleswoman in selling smaller goods of every kind (took a stall at a bazaar), so that the Catholic church might be built more splendidly. A little later, the Anglican church which Lucy frequented was to be restored by employing the same means, and Agatha was asked by her friend that she herself should perform the similar part of saleswoman for the Anglican church. Not knowing how to refuse, Agatha assented; indeed, she herself contributed some things to be sold as a testimony of a grateful spirit toward Lucy. The Catholics, however, were not a little scandalized, and accordingly Agatha afterward relieved her troubled conscience to her confessor. It is asked:

1. When is someone obliged to avoid the scandal of others?
2. When is cooperation in another's sin lawful?
3. What is to be said of the case?

SOLUTION

1. When is one obliged to avoid giving scandal to others ?

We must of course avoid giving scandal to others by doing anything wrong ourselves which will lead them into sin. We are also obliged to omit any action which is indifferent or good but not of precept by which scandal would be given to the weak or ignorant, if we can do so without serious inconvenience. We may not omit in this case an action which is prescribed by natural law; whether we are bound to omit what is prescribed by positive law is a disputed question among theologians. We are not bound to avoid pharisaic scandal by omitting an action which is good or indifferent and which has no appearance of evil.

2. When is co-operation in another's sin lawful?

Formal co-operation in another's sin is never lawful; material co-operation is lawful provided that the action by which co-operation is given is good or at least indifferent, and provided that there is a good and proportionate reason for the co-operation (see p. 152).

3. The case. Agatha, a Catholic, and Lucy, an Anglican of the High Church party, were friends. They often helped each other in works of charity, and Lucy often helped Agatha in what she did for religion, taking a stall when a bazaar was held to raise funds for making an addition to the Catholic church of the place. When the Anglican church was to be restored, Lucy asked Agatha to take a stall for her, and Agatha not only consented but gave some objects to be sold at the bazaar as a mark of her gratitude. At this Catholics were scandalized, and so Agatha told what she had done when she went to confession.

There was no harm in the two friends working together in deeds of charity, and Lucy's help could be accepted in the Catholic bazaar. But Agatha should have shown her gratitude to her friend in some other way than by taking a stall and giving things to be sold at the Anglican bazaar held for the restoration of the Anglican church. For this is a religious object, and a Catholic is not at liberty to help and show favor to a non-Catholic religious object. It naturally gave scandal to other Catholics. Agatha, therefore, was guilty of material wrong-doing as she seems to have acted in good faith, and she should avoid such actions in future, as a general rule. There might be exceptional circumstances which might excuse a Catholic who contributed to the restoration of an Anglican church because it was an ancient historical monument, if it could be done without scandal. In the case we suppose no such special circumstances to exist.

Case 4. Fraternal Correction and Race-suicide

Paula, a Catholic matron, asked her confessor whether the things which censors of public morals say about race suicide were true. The confessor, however, asked for a fuller explanation of the question. Then Paula acknowledged that for several years she had been accustomed to wash the vagina with medicated water after marital intercourse, since she was too weak to have offspring; and since her daughter had become engaged to an officer who would suddenly be sent to a distant colony and could not support a family on his meager salary, Paula taught her how she could conduct married life without danger of offspring. With her husband's consent, the daughter still successfully puts into practice the method taught by her mother. Having heard these things, the confessor is uncertain what he ought to say to Paula. Hence it is asked:

1. Is it lawful, after intercourse has taken place, to impede conception in any way whatsoever?
2. Is there an obligation of fraternal correction, and of what kind is it?
3. What is to be said about the obligations of the confessor and of Paula in the case?

SOLUTION

1. Is it ever allowed to take means to prevent conception ?

St. Alphonsus says: "Never is it lawful for a mother, on account of any danger whatsoever, to take a potion to prevent conception."¹ And the doctrine remains the same, whatever means are taken for the purpose.

¹ *Theol. Mor.*, lib. iii, n. 394.

2. Is there an obligation to give fraternal correction?

Yes, there is. This follows from the general obligation of charity which binds us to do what we can to help our neighbor in his necessity, whether spiritual or corporal. Hence if we know that another is in mortal sin and that he is not likely to correct it of himself, and there is nobody else who can or will do it better than ourselves, and there is good hope of succeeding, we are bound at a suitable time to do what we can to assist our neighbor to arise from his state of spiritual death.¹

¹ Compare Matt. xviii. 15.

3. The case. The confessor is bound in the first place to tell Paula that what she has been doing is wrong, and she must promise not to do it again. Moreover she is responsible for having taught the practice to her daughter, and besides the latter's husband she is probably the only person who knows of the daughter's practice. She is, then, under the additional obligation of telling her daughter that what she taught her is wrong, and of doing what she can to induce her to abandon the practice for the future. The practice is harmful to her who employs it and is destructive of the race, so that it is rightly called race-suicide. The confessor, therefore, should explain to Paula the obligation she is under. Even if the means adopted sometimes failed in the

desired effect, the act would always be gravely sinful on account of the intention with which it was done.

Case 5. Questions About Scandal

Bertha, who serves in the household of a non-Catholic master, approaches James, her confessor, and sets forth the following facts, concerning which she has a scruple and seeks his judgment about them: (a) Every day before she went to bed she had recited the Rosary, and in the presence of the other servants, although, because they had seen the rosary beads, they took from this an occasion to blaspheme the Blessed Virgin Mary. (b) Several times she had not hesitated to tell less modest stories, foreseeing that the other servants would probably take from this an occasion to begin truly indecent conversations. (c) Returning from church on Sunday, she had frequented streets where dissolute youths walk about, although she had often furnished one or another an occasion for uttering indecent things. (d) She had left the sons of the family, whose care she had, an occasion for stealing food, in order to catch and punish them. Hence it is asked:

1. What does scandal mean, and what are its species?
2. What is the malice of direct and indirect scandal?
3. What is the obligation of omitting works both of precept and of counsel in order to avoid scandal?
4. What judgment ought to be rendered by James?

SOLUTION

1. This question is answered in "Manual of Moral Theology," vol. i, p. 198. 2. See the answer to this in "Manual of Moral Theology," vol. i, p. 199.
3. For the answer to this, see "Manual of Moral Theology," vol. i, p. 200.
4. The case. Bertha, a Catholic governess in a non-Catholic family, tells James her confessor the following facts about her conduct and asks his advice about them: (a) She said her Rosary in presence of the other servants before going to bed, although the sight of the Rosary caused them to blaspheme the Blessed Virgin. Bertha can say her Rosary without letting it be seen by the other servants, and she should do this to prevent their blasphemies. (b) Often she has told suggestive stories although she foresaw that the other servants would take the occasion to tell really immodest ones. In this Bertha committed the sin of indirect scandal, and its gravity will depend on the gravity of the sins committed by the other servants in telling their immodest stories. (c) Coming from church on a Sunday she came by streets frequented by youths of bad character although she often occasioned indecent remarks. It is not suggested that Bertha chose these streets in order to meet the young men. If she can without inconvenience return by some more respectable streets, she should do so. We suppose that there is nothing in Bertha's dress or manner to provoke the remarks, and so the scandal is pharisaic, and she need not put herself to inconvenience to avoid it. She should pay no attention to the objectionable remarks. (d) She allowed the children, of whom she had charge, to pilfer small morsels of food

in order to catch and correct them. Such an action is not scandal, and so she need not be troubled about it.

Case 6. Denunciation of Offender

Caius, a boy who was staying in a certain Catholic college for the sake of education, confessed to Paul, his confessor, that, having been solicited by another boy, he had gravely sinned against the sixth commandment more than once. Paul judged that the danger of a future fall was not slight, and therefore declared to Caius a grave obligation of revealing the name of the accomplice to the prefect or another superior. When Caius refused to satisfy this obligation, Paul intimated to him that it was sufficient to write the name of the one soliciting him on a closed paper and deliver it to him; when Caius refused to do even this, Paul dismissed him without absolution. Hence it is asked:

1. What is fraternal correction, and what is its obligation?
2. How ought it to be made?
3. Is it lawful for a confessor to inquire from penitents the name of an accomplice?
4. What is to be said of the case?

SOLUTION

1. This question is answered in “Manual of Moral Theology,” vol. i, p. 194.
2. The answer to this is given in “Manual of Moral Theology,” vol. i, p. 195.
3. May confessors ask from penitents the name of those with whom they have sinned?

In three different constitutions Benedict XIV condemned the practice of asking from penitents the names of those with whom they have sinned, and imposed severe penalties on those confessors who do this. The constitution *Apostolicae Sedis* of Pius IX imposed the penalty of excommunication reserved to the Pope on all who teach or defend as being lawful the practice of asking for the name of an accomplice in sin, as it was condemned by Benedict XIV in the Constitutions *Suprema*, July 7, 1745, *Ubi Primum*, June 2, 1746, *Ad Eradicandum*, Sept. 28, 1746. Benedict XIV in those constitutions expressly supposes that there are occasions when it is allowed to ask the name of an accomplice, and the confessor is justified in asking about the circumstances in which a sin was committed with a view to the integrity of confession and fulfilling the duty incumbent on him of prescribing remedies against sin even when such inquiries disclose to him the identity of the accomplice.¹

¹ St. Alphonsus, book vi, nos. 491, 499.

4. The case. Caius is under the obligation of taking the necessary means for guarding himself against a relapse; he is bound by the precept of fraternal correction to try to amend his accomplice; and he is under a general obligation of charity to prevent great harm coming to the college in future from the presence of a black sheep among the boys. Practically and ordinarily the only way in which he can fulfil these obligations is to denounce the offender to the authorities. Paul, the confessor, was therefore right so far. He was, however, a little precipitate. He should, first of all, have tried to discover the boy's dispositions with respect to denouncing

his accomplice before telling him that he was under a grave obligation to do it. Paul might perhaps have discovered that Caius had some sort of excuse, such as fear of consequences, for not making the denunciation, or that he was under the impression that he could not be bound to do such a thing, and then perhaps the confessor might have seen reason not to proceed to extremities with the boy all at once. It is of immediate necessity that Caius should take means to preserve himself from falling again, and giving information to the authorities is not absolutely necessary for that.

Case 7. A Police Agent

Those who watch over the public peace in London were recently informed about certain forgers who were manufacturing counterfeit banknotes. Hence they induced a certain Caius to buy those counterfeit notes for them for the sake of proving the crime, which he did by giving fifty shillings for each note whose fictitious value was five pounds sterling. When the priests Titius and Julius read this in the public newspapers, they disagreed concerning the honesty of Caius's action, Titius saying that it was lawful, but Julius denying it, since it is never lawful to incite anyone to evil. Hence it is asked:

1. What is scandal, and what kind of sin is it?
2. What is it to cooperate in another's sin, and is it ever lawful?
3. How do an occasion and a cause of another's sin differ, and is it lawful to posit either one?
4. What is to be said of the case?

SOLUTION

1. This question is answered in "Manual of Moral Theology," vol. i, p. 198.
2. This question is answered in "Manual of Moral Theology," vol. i, p. 203.
3. How does an occasion of another's sin differ from a cause of it, and is it lawful to put either?

An occasion of sin is given when something is done which another takes advantage of to commit sin although what was done did not cause the sin either physically or morally.

The occasion may have suggested the sin, but it did not cause it; the sin is wholly due to him who takes advantage of the occasion to do wrong. A cause of sin on the other hand produces it, or effects it, either physically or morally. Thus one who induces another by persuasion to commit theft is the moral cause of his sin; if he merely committed theft himself without saying anything to the other, who thereupon followed his example, the former would be the occasion of the latter's sin.

The case. The London police had information about some forgers of bank notes. In order to be able to convict them they induced Caius to buy some of the forged notes for them at the rate of fifty shillings for each five pound note. When two priests, Titius and Julius, read of this in the papers, they disagreed about the lawfulness of the proceeding. Titius said that it was all right; Julius denied this, on the ground that it is never lawful to incite anyone to do wrong, and this Caius did by inducing the forgers to sell worthless bits of paper for fifty shillings.

Titius was right and Julius was wrong. Caius knew what he was doing and there was nothing wrong in it from his point of view. He was willing to pay fifty shillings in order to get certain evidence of the crime committed by the forgers. For the common good he furnished them with an opportunity of betraying themselves, and they took it. The forgers always had the habitual intention of selling their worthless notes; whenever they did this, they committed sin. But Caius had good reason for

furnishing them with an occasion of selling their notes though they committed sin thereby. With this sin Caius only co-operated materially, not formally.¹

¹ St. Alphonsus, book ii, treatise 3, no. 47.

The Decalogue

The First Commandment

Case 1. Public Worship

Albertus, a priest who knows well the prescriptions of the Church concerning Litanies that must be approved by due authority, is doubtful about the lawfulness of certain Litanies that are found in a book of prayers approved by the bishops of the Province of Westminster, commonly called the *Manual of Prayers*. The same man found, on the walls of the church whose care he recently undertook, painted images of English martyrs not yet beatified, and beneath them, with the name of the martyr, the inscription—"Martyred"—on such a day and year. He doubts, however, whether due observance toward the Holy See and care for procuring the beatification of those martyrs require that the images be removed. Hence it is asked:

1. What are private prayer and public prayer; private worship and public worship?
2. What is prescribed concerning formulas of public prayer? And what specifically concerning Litanies to be published or recited?
3. What worship of those beatified and of those not yet beatified is lawful?
4. What is to be said of the case?

SOLUTION

1. What is public and private prayer, public and private worship ? According to Suarez, in order that prayer may be public in the technical sense, it is necessary that it be offered by a minister duly appointed by the Church to act in her name, that he should have the intention of fulfilling his office, and that he should use the forms approved by the Church for the purpose. Prayer which has not these conditions is private. There is the same distinction between public and private worship.¹

¹ Suarez, *De Rel.*, vol. ii, lib. iii, c. 2, n. 2.

2. What is prescribed concerning the forms of public prayer, and what especially about publishing or saying Litanies?

Only those forms must be used in public prayer which are approved for the purpose by the Church. The right of ordering the liturgy belongs to the Pope, whose approbation is required in the Latin Church for the Breviary, Missal, Pontifical, Ceremonial of Bishops, and the Ritual. Bishops may approve forms of prayer for public use outside the strictly liturgical functions of the Church. Only those Litanies may be publicly said in churches and public oratories which are in the Breviary or in the later editions of the Roman Ritual approved by the Holy See, and no others may be printed even for private use without the approbation of the Ordinary.²

² S. R. C., Nov. 28, 1895; Const. Leo XIII, *Officiorum*, n. 19.

3. What worship may be paid to beatified saints and to the non-beatified ?

Private worship may be paid to such as have died by those who have moral certainty that they are with God. In order that public worship may be paid to them they must at least be beatified by the Pope, and even to the beatified only those signs of worship may be paid which the Church expressly permits in the brief of beatification.

4. The case. Albert, a priest, is doubtful about the lawfulness of certain Litanies to be found in the "Manual of Prayers" approved by the English bishops. It follows from what has been said that only the Litanies of the Saints, of the Holy Name, of the Sacred Heart, of the Blessed Virgin, and of St. Joseph, may be said publicly; the other Litanies in the "Manual" may be used for private devotion. Albert finds in his church pictures of English martyrs not yet beatified with the inscription "Martyred" on such a day, in such a year. If the pictures have no signs of religious worship about them, such as an aureole or rays, and they are not placed over the altar, they are permitted. The inscription would only mean that the person represented was put to death for the Faith, but would not be intended to forestall the judgment of the Church on the fact of martyrdom.

Case 2. Doubt Cast on an Ancient Relic

Titius, a priest and moderately learned, was scandalized and perplexed when he read in the newspapers that several Catholic historical writers now hold that the House of Loreto is not the very house of Nazareth in which the Holy Family dwelt. But since the Roman Breviary (December 10) declares: "That it is the selfsame one in which the Word was made flesh and dwelt among us is proved both by pontifical documents and by the most celebrated veneration of the whole world, and by the continual power of miracles and the grace of heavenly benefits," and the Church still appears to approve the worship of that house, Titius did not know how these things are to be reconciled. Hence he asks:

1. What kind of worship is shown by the Church to sacred relics?
2. In order that religious worship may be shown to relics, is certainty concerning the genuineness of the relics required?
3. Does the approval of the Church, or even miracles, bring it about that complete certainty concerning the genuineness of relics is had?
4. What is to be said of the case?

SOLUTION

1. What sort of worship is paid by the Church to sacred relics?

The worship which the Church pays to sacred relics is relative, not absolute; that is, relics are honored not on account of any intrinsic holiness of their own, but because of their connection with a person who is worthy of honor. Special honor is paid to portions of the true Cross because Our Lord died on it for our salvation; relative honor, called *dulia*, is paid to relics of the saints.

2. Is certainty about the authenticity of relics required in order that worship may be paid them?

Yes, moral certainty is required; for religious worship may not be paid to an object which is probably not worthy of such honor. Private certainty of the authenticity of a relic and of the sanctity of the person with whom it is connected is sufficient to justify private worship; for public worship the approbation of the Church is required. A bishop may approve relics of those saints who are canonized or beatified ; the Pope alone can approve relics of those who are not canonized nor beatified. The honor which has hitherto been shown to ancient relics from time immemorial should continue to be paid to them even though there be no authentication, unless it becomes certain that they are false.

3. Does the Church's approbation or even miracles make the authenticity of a relic absolutely and irrefragably certain?

No. The Church's approbation is a sufficient guarantee that the authenticity of a relic is morally certain indeed, but it is a question of fact, and new reasons may be discovered which show that what was believed to be true is false. God, too, may work miracles in reward of the dispositions of those

who honor a relic which they suppose to be a true one, although it is in reality false. The miracle is a reward of good dispositions, not a divine guarantee of the authenticity of a relic.

4. The case. By what has been said we can soothe the perplexity of Titius without entering on the question whether the Holy House at Loreto is really that in which Our Lord lived. Possession is in its favor, and it has not yet been shown not to be the Holy House. The Breviary and the Papal briefs rest on what was deemed satisfactory evidence of the truth of their assertions at the time when they were written. They may stand until they are shown to be mistaken. If that ever comes about, the Church will doubtless recall her sanction, and meanwhile we may go on as before. For the principles involved in this solution see Benedict XIV, *De Canon. Sanctorum*, lib. iv, pt. ii, c. 13 and c. 24.

Case 3. A Dangerous Advertisement

Caius, a young Catholic, reads in a Catholic newspaper a notice (*advertisement*) concerning a certain man who was prepared to teach hypnotism and similar things to all who paid the price. Caius wrote to the man and bought his book, in which the method of hypnotizing, of writing with a *planchette*, and so forth, was described. For the sake of curiosity, recreation, or acquiring knowledge, he began to hypnotize his brothers and sisters and to ask the *planchette* for messages concerning absent friends. Julius, his parish priest, found him occupied in this way one day when he was visiting the family, and, asking whence Caius had learned those things, heard what has been narrated above. Hence it is asked:

1. What is divination, and what is its malice?
2. Is it lawful to practice or to undergo hypnotism?
3. What is to be said of the newspaper, of Caius, and of Julius in the case?

SOLUTION

1. What is divination and wherein lies its malice?

Divination is the express or tacit invocation of the devil to gain knowledge of the occult. We obtain knowledge lawfully by using natural means or by studying the revelation given by God. If we try to obtain knowledge of occult matters from the devil, we commit sin by associating ourselves with the enemy of God and of ourselves, an enemy who is certain to do us harm, and to whom we offer a sort of worship by attributing to him knowledge of the occult. Such communication with the devil is specially prohibited in Holy Scripture.¹ By the very fact of employing means which are altogether incapable of themselves to give us the knowledge which we seek, we invite the intervention of the devil and tacitly invoke him.

¹ 1 Cor. x. 20; Deut. xviii. 10.

2. Is it allowed to exercise or to undergo hypnotism ?

Experts, for good cause, with proper precautions, may practise hypnotism as the Holy Office answered July 26, 1899. Under similar restrictions, therefore, one may undergo hypnotism. In other circumstances it is not lawful either to practise or to undergo it. It is obvious that it is not lawful for the purpose of divination, but neither is it lawful as a means of recreation, or for the sake of satisfying curiosity. At the lowest it is the induction of an abnormal state in which the nervous system is interfered with by one who is, as we suppose, no expert. Thus it is trifling with a very delicate machine and in a matter which is still mysterious to a great extent. There is considerable danger to morals while one person in a state of unconsciousness is to a great extent in the power of the hypnotizer. A rapport is established between the hypnotizer and the subject, which to a greater or less extent puts the latter in the power of the former.

3. The case. From what has been said it is clear that the Catholic newspaper should not have admitted the advertisement offering to teach all who would pay for it how to hypnotize others and write with the planchette. Caius did wrong in buying the book, and in practising hypnotism on his sister and automatic writing out of curiosity, or for recreation, or to gain knowledge. He should devote himself to less objectionable means of gaining knowledge. Julius, the parish priest, who catches them at their game, should warn them and their parents of the danger of meddling with occult matters, and tell them to throw the book and the planchette into the fire.

Case 4. The Divining Rod

Caius, a Catholic, cultivated fairly extensive lands, which, however, did not abound in water. When he heard that Marcus had rather often found water for others by means of a divining rod, Caius consulted his confessor as to whether it was lawful to hire Marcus to find water for him on his land. Hence it is asked:

1. What is divination, and whence is it unlawful?
2. Can it be proved with sufficient certainty that water does not naturally bend the divining rod?
3. What is to be said of the case?

SOLUTION

1. This question is answered in “Manual of Moral Theology,” vol. i, p. 217.
2. Can it be proved for certain that water does not naturally bend the divining rod?

Yes; this can be proved by the application of the fundamental axiom of natural science — the uniformity of nature. If the twig bends at the presence of underground water, it should do so all the more when the water is exposed; yet ordinarily it does not do so. Moreover, the divining rod is used to find not only underground water, but minerals, lost property, and other objects. And when it is being used to find minerals, it does not indicate the presence of underground water, and vice versa. Besides, if the divining rod is moved by the water, the movements should take place, no matter who holds it. Conscious or unconscious muscular movements are capable of causing the bending of the rod, and in many cases have been observed to do so. See Professor Barrett’s “Reports on the Divining Rod.”¹ Whence we may conclude with Professor Barrett: “Few will dispute the proposition that the motion of the forked twig is due to unconscious muscular action.”² The rod on this hypothesis is merely an indicator which shows when the diviner is over a supply of underground water. The presence of water is suggested to the diviner according to Professor Barrett “From various hints he has gathered or knowledge he possesses becoming unconsciously operative ; or from his subconscious and perhaps hyperaesthetic discernment of the surface signs of underground water or ore; or from some kind of transcendental discernment possessed by his subconscious self.” Professor Barrett attributes great importance to the last source of knowledge and thinks “that in years to come we shall see in all these phenomena the manifestation of the transcendental Subject which lies in the background of our being, and remains unrevealed to our self-consciousness.”³ For this pantheistic interpretation of certain rare and extraordinary cases the Catholic theologian will substitute the intervention of preternatural causes.

1 *Proceedings S. P. R.*, vols. xiii and xv.

2 Vol. xiii, p. 243.

3 Vol. xv, pp. 310, 311.

3. The case. The confessor of Caius will tell him that he may use his own judgment about employing Mark the dowser to find water for him. It is probable at least that divination does not enter into the method of the ordinary dowser, and that he may therefore be employed without sinning against religion.

Case 5. Hypnotism in Medicine

Arsenius, a Catholic physician, was accustomed to lull nervous clients, or those given to drunkenness, into a hypnotic sleep, and, while they were asleep, to suggest various remedies directed toward curing them. Indeed, once, when he had received a letter from a long-standing client who lived at a distance, in which he was asked whether the prescribed medicine should be continued or changed, since he wished to know more about the client's condition and could not visit him, he consulted what they call a "medium," lulled into a hypnotic sleep, concerning the client's condition, and received a truthful answer. He had heard, however, that the Church had condemned every use of hypnotism, and, in order that he might be safe in conscience, he asked his confessor about the lawfulness of the things done by him. Hence it is asked:

1. What is to be said concerning the cause of hypnotism?
2. Are the decrees concerning animal magnetism to be applied to hypnotism?
3. What is to be said of the case?

SOLUTION

1. What is to be said about the cause of hypnotism? The question which concerns us here is whether hypnotism is to be attributed to natural or to preternatural causes. Many of the older theologians expressly attributed it to the devil, whence it followed that Catholics could take no part in it. Others, however, distinguished between the phenomena of hypnotism. The hypnotic sleep itself, anaesthesia, catalepsy, aptitude for receiving suggestions, somnambulism, and other similar phenomena, they attributed to natural causes, as similar normal or pathological states are familiar. Clairvoyance, knowledge of languages and sciences unknown in the normal state, prediction of the future, and similar phenomena, they attributed to preternatural causes. The Holy Office in its decrees of July 28, 1847, Aug. 4, 1856, July 26, 1899, favored the latter opinion.

2. Are the decrees concerning animal magnetism to be applied to hypnotism ?

Yes; the same phenomena which are now grouped under the general name of hypnotism were formerly known by that of mesmerism or animal magnetism. And so the two first of the decrees of the Holy Office which have just been referred to and which expressly mention magnetism may and should be applied to what is now called hypnotism.

3. The case. Arsenius, a Catholic doctor, is accustomed to use hypnotism in the treatment of nervous patients and of those given to drink. It would be well if he were to try other approved remedies first, and to have recourse to hypnotism only in cases where they have failed, and never to hypnotize anyone except in the presence of a third person. Under these conditions Arsenius may continue to use hypnotism for such cases as these. But when he consulted a medium about the state of health of a distant client whom he could not visit in person, he transgressed the limits allowed to a prudent Catholic doctor. Although such acts of

clairvoyance are reported they seem to be inexplicable by the forces of nature; examples of mistake and fraud in such cases are frequent, so that it is by no means a safe method of diagnosing a disease. Arsenius therefore did wrong in this respect. The decree of the Holy Office, dated July 26, 1899, given in answer to a doctor who had consulted it, confirms this solution: "With regard to experiments already made, they can be permitted, provided that danger of superstition and scandal is absent, and moreover that the petitioner is prepared to abide by the commands of the Holy See and does not act the part of a theologian. With regard to new experiments, if it concerns facts which certainly exceed the powers of nature, they are not lawful; but if there is doubt about this, after a prior protestation that he wishes to have no part in preternatural facts, it is to be tolerated, provided that danger of scandal is absent." Leo XIII approved.

Case 6. Personal Sacrilege

Titius, a priest and a solemnly professed religious, sometimes fell into grave sins, both internal and external, against the sixth commandment of the Decalogue. While he confesses them to confessors who do not know the condition of the penitent, in declaring the sins he sometimes says only that he is a priest, without saying that he is also a religious; sometimes only that he is a religious, without making mention of the priesthood; sometimes that he is a professed religious; indeed, once, although he confesses grave internal sins against the sixth commandment, he says nothing about his condition. Afterward, however, while he consults approved authors, he begins to doubt the integrity of his confessions. Hence it is asked:

1. What is sacrilege?
2. Who is a sacred person?
3. In what ways is a sacred person violated by the sin of sacrilege?
4. What is to be said of the case?

SOLUTION

1. This question is answered in “Manual of Moral Theology,” vol. i, p. 226.
2. Who is a sacred person?

A sacred person is one who has been specially consecrated to God by the authority of the Church for a particular purpose, as for the observance of chastity. In the matter of sacrilege the term also signifies one who enjoys the privilege of personal inviolability, so that by ecclesiastical law those who use violence against him or who convene him before the civil courts contrary to *privilegium fori* are guilty of sacrilege.

3. In what ways is a sacred person violated by a sin of sacrilege?

Persons who have been consecrated to God for the observance of chastity commit a sin of sacrilege if they violate chastity even in thought. This is *communis et certa doctrine*, says Lehmkuhl.¹ Sacrilege is also committed by using violence against clerics and religious contrary to *privilegium canonis*, as also by violating *privilegium fori*, as far as it is still in force. These different ways of committing personal sacrilege probably are not distinct species of the sin; they are merely different acts belonging to the same species of sacrilege, according to St. Thomas.²

¹ Vol. i, no. 385.

² II-II, question 99, article 3, reply to objection 2.

4. The case. Titius satisfies his obligations by saying that he is a priest, or by saying that he is a Religious, without saying that he is professed. “It is probable that there is no need to express whether the vow was solemn or simple; just as there is no need if he is consecrated by a

double title, for example, because he is a priest and a religious: because there is morally one malice in number.”³

3 St. Alphonsus, book iii, no. 454.

He does not satisfy the obligation of integrity by confessing internal sins against chastity without saying anything about his condition, or at least that he is under a vow of chastity when the confessor knows nothing about his state of life. Of course if the confessor knows that he is a priest, what he said would suffice.

Case 7. Diabolical Possession Scientifically Explained

Titius thinks that by means of modern science the phenomena which theologians hitherto have been accustomed to attribute to diabolical possession can be sufficiently explained. Thus, in a recent case in which a certain nun is said to have received wounds inflicted by a demon, Titius attributes the phenomenon to the imaginative power of the nun herself; the power of the same nun to distinguish between ordinary and blessed water, a consecrated and an unconsecrated host, the effect of exorcism, and even knowledge of languages hitherto wholly unknown, Titius attributes to emanations from the brains of bystanders who knew those languages. Caius recognizes that such things are signs of diabolical possession commonly admitted not only by theologians but by the Church in the Ritual; hence he would very much like to know whether the explanation of Titius can be admitted. Hence it is asked:

1. Is diabolical possession truly found, and by what signs can it be established?
2. Can the theory of telepathy, or *thought-reading*, be admitted?
3. What is to be said of the case?

SOLUTION

1. Does diabolic possession exist and by what signs may it be known? Diabolic possession certainly exists, as we know from the pages of Holy Scripture, and very similar cases have been reported in all times down to the present day. While the Roman Ritual warns priests not to be too ready to believe that anyone is possessed by the devil, it gives the signs by which they may be able to distinguish cases of true possession: "First, let him not easily believe that anyone is possessed by a demon, but let him know well those signs by which one possessed is distinguished from those who labor either from black bile or from some disease. The signs of a possessing demon, however, are: to speak many words in an unknown language, or to understand one speaking; to disclose distant and hidden things; to show strength beyond the nature of one's age or condition; and other things of this kind, which, when very many concur, are greater indications." — *De Exorcizandis Obsessis a Daemonio*.

2. Can the theory of telepathy, or thought transference, be admitted ?

Telepathy is the name given to a theory according to which thought may be transmitted from mind to mind through the ether or through other than the ordinary channels of sense. Many claim that the possibility of telepathy has been demonstrated by experiment. Others, however, stoutly deny this. Thus Dr. J. Milne Bramwell writes: "After many years' hypnotic work, and frequent opportunities of investigating the experiments of others, I have seen nothing, absolutely nothing, which might be fairly considered as affording even the slightest evidence for the existence of telepathy, or any of the so-called occult phenomena."¹ Sir Oliver Lodge and others invoke the theory of the subliminal consciousness in order to explain the wonders of hypnotism and spiritism. Dr. Bramwell rejects this and other theories as inadequate to explain the facts, and then adds: "As William James truly says,

these manifestations of the hidden self are immensely complex and fluctuating things, which we have hardly begun to understand, and concerning which sweeping generalization is sure to be premature.”¹

¹ *Hypnotism*, p. 142.

¹ *Hypnotism*, p. 420. 2d ed., 1906.

3. The case. Titius thinks that the phenomena which theologians attribute to diabolical possession may be explained by the help of modern science. Thus in a recent case where a nun was said to have been wounded by the devil, Titius explains the facts by the force of the imagination. Theologians who are worthy of the name ask first for conclusive evidence of such alleged facts. If the wounds or other phenomena are certainly existent, theologians look for a natural explanation first, and only attribute them to the devil when all possible natural causes have been shown to be inadmissible. The nun's wounds may easily have been caused by some more ordinary means than her imagination, or in some special case the explanation of Titius might be the true one. Titius attributes to telepathy the nun's power to distinguish holy from common water, a consecrated from a non-consecrated host, the effect which exorcism produces on her, and her knowledge of languages hitherto unknown by her altogether. In this Titius has gone farther than science warrants. Whether telepathy exists or not in the very modest sense of transferring from mind to mind without the intervention of the senses the number of a playing card, or a geometrical figure, is still doubtful. Even granting that telepathy in this sense is *vera causa*, the gap from this to the applications of Titius is too wide for science to leap. Caius therefore will reject the explanation of Titius as being unscientific; but at the same time he will bear in mind the caution of the Ritual, which does not say that any one or two phenomena are indubitable signs of diabolical possession, but that when “very many such signs concur, they are surer indications” of diabolical possession.

The Second Commandment

Case 1. Anglican Vows

Lucia, an Anglican, makes the three perpetual vows of religion in a certain congregation of Anglican women called Saint Margaret's. While she was faithfully observing her vows, by reading Catholic books she gradually became persuaded that the Catholic religion alone was true. Therefore she left the Anglican Church and the congregation without any permission of the superioress, and was received into the Catholic Church by Julius, a Catholic priest. She asked Julius whether and to what extent she was still bound by the vows made in the Anglican Church, and what she must do if she were bound; he answered that she was by no means bound by them, inasmuch as they had been made from error, and that even if she were bound, he dispensed her from them in such a way that she remained entirely free. Hence it is asked:

1. What is a vow, and to what extent is it invalid from ignorance or error?
2. What is the obligation of a vow, and how does it cease?
3. Who are able to dispense from vows?
4. What is to be said of the case?

SOLUTION

1. What is a vow and how far is it rendered invalid by ignorance or mistake? A vow is a promise made to God concerning something which is possible and better than its opposite. Ignorance and mistake about the substance of the vow, or about some quality of it which is of great importance, makes the vow invalid; ignorance and mistake about accidental qualities of small moment do not invalidate the vow.
2. What is the obligation imposed by a vow and how does it cease?

A vow produces an obligation to perform what was promised to God. This obligation, like that of a law, depends partly on the matter of the vow, partly on the intention of him who takes the vow. If the matter is serious, the obligation will be grave, unless he who made the vow expressly limited the obligation, and willed it to be light. The obligation of a vow ceases intrinsically or extrinsically. It ceases intrinsically if the matter of it becomes impossible, useless, or immoral; if it undergo a change of importance; if the final cause of it cease to exist; and on the non-fulfilment of a condition if the vow was conditional. It ceases extrinsically if it is annulled, dispensed, or commuted by competent authority.

3. Who can dispense vows?

Those who have spiritual jurisdiction in the external forum can for good cause dispense from vows which are not reserved to a higher authority. The Pope, bishops, and Religious superiors can dispense by their ordinary authority; confessors and others who are capable of exercising ecclesiastical jurisdiction, by delegated authority.

4. The case. Lucy, an Anglican, took the perpetual vows of poverty, chastity, and obedience, in an Anglican order of St. Margaret. From reading Catholic books she became convinced that the Catholic Church is the true Church of Christ, left her convent without leave of her superioress, and asked Julius, a Catholic priest, to receive her into the Church. She further asked Julius whether and how far she was bound by her vows, and he answered that she was not bound at all, because they were taken under mistake, but in any case he said that he would dispense her from them as far as was necessary, so that she might be free.

Julius was wrong in saying that the vows were invalid on account of mistake. Lucy was under mistake about the true Church, but not about her vows, as far as the case allows us to see. She was also in error about the Religious congregation to which she belonged, and if she only took her vows as a member of the order, and conditionally on her remaining in it, they would lapse on her leaving it. But as they were perpetual we must not presume such a condition; they were taken to God independently of the order in which she took them. She had promised God to observe during her life poverty, chastity, and obedience, and we must presume that she knew and intended what she promised. The Anglican Church, however, had no legitimate claim on her, nor had the Anglican sisterhood. Hence they will be private vows, not vows of religion in the strict sense. Julius, as confessor, would usually have faculties to dispense the vows of poverty and obedience; the perpetual vow of chastity is reserved to the Holy See, though special powers are often granted to bishops to dispense in it. If Lucy wants a dispensation from this vow, she may have recourse to the bishop either directly or through her confessor. The Sacred Penitentiary, Nov. 29, 1842, answered that the vows of a Protestant made orally and in writing before an Anglican minister are simple vows, and that the one vowing is bound to the observance of the vow if he had a true intention of vowing.¹

¹ *Collectanea S. C. de P. F.*, n. 959. 2d ed.

Case 2. A Confirmatory Oath

Titius and Bertha, Catholics, seriously gave mutual promises of entering into marriage in the future without committing them to writing, which they thought useless since Titius had confirmed them by oath. But, such is the instability of the human heart, through the familiarity permitted to him as Bertha's betrothed, Titius gradually conceived a more ardent love for Catharine, Bertha's sister. At length, after some time, his disposition was so changed that he could not endure Bertha, because he regarded her as an obstacle to union with Catharine. The parish priest, consulted by Titius about his freedom, answered that the promises in the case indeed had no canonical effects, but nevertheless produced a natural obligation which bound in conscience, especially since they had been confirmed by oath. Hence it is asked:

1. What is the effect of an invalidating law with respect to an act valid by natural law?
2. What is an oath, and what kind of obligation does it introduce?
3. What is to be said of the case?

SOLUTION

1. What is the effect of a voiding law on an act which is valid by the law of nature?

The effect of a voiding or annulling law on an act which otherwise would be valid depends very much on the intention of the legislator. Sometimes the legislator merely.

intends to deny the right of bringing an action in court to enforce a claim; sometimes the claim is made voidable, not void; sometimes it is made void. What the effect is of any particular voiding law will therefore largely be a question of interpretation. :

2. What is an oath, and what sort of obligation does it impose?

An oath is the calling of God to witness to the truth of what we say. It imposes a special obligation out of reverence for God, the God of truth, to tell the truth, or, in a promissory oath, to be faithful to the promise given. A promissory oath is accessory to the promise which it confirms, and must be interpreted according to the nature of that promise. If for any reason the promise was null and void from the beginning, or if it becomes so, the oath, as being accessory, will also cease to bind.

3. The case. Titius and Bertha enter into a verbal engagement to marry, and Titius confirms his promise with an oath. Afterward he falls in love with Catharine, Bertha's sister, and wants to marry her. As now he can not endure Bertha, he asks his parish priest whether he may do as he desires, but he is told that though the verbal engagement with Bertha produced no canonical effects, yet it gave rise to a natural obligation by which he is bound to marry her, especially as the promise was confirmed by oath.

The parish priest was wrong in giving this answer. If that were the effect of the new law *Ne temere*, it would not attain the end intended by the lawgiver—"that the inconveniences might be met which

arise from betrothals, that is, from mutual promises of future marriage entered into privately." Just as clandestine marriage is null and void, so unwritten engagements are null and void by the new law. "Therefore

Titius' engagement was null and did not produce any natural obligation, and the oath as being accessory was also void. This, if we look merely at the promise and the oath; for if Bertha will suffer any special damage on account of having relied on the promise and oath of Titius, he will be bound to abstain from damaging her, and if he does not do so, he will be bound in justice to compensate her as far as he can. In certain circumstances he might even be bound to marry her, if that were the only means of saving her from a cruel wrong, not precisely on account of his sworn promise, but because he has no right to deceive others in the reasonable expectations which they have formed from his course of conduct towards them.

Case 3. Dismissed from His Order

Caius, a priest formerly a regular, approaches Julius, a confessor of the same Order, to whom he lays open the scruples and anxieties of his conscience. For he said that he was troubled about the manner in which he had obtained dismissal from the Order. For, on account of various difficulties which he experienced, he lost love of his vocation and urgently sought dismissal; at first, however, the superiors exhorted him to persevere, but after repeated petitions they finally granted him dismissal. For some time he applied himself to the duties of a secular priest, and then, when he thought himself not safe in conscience, he hastened to Julius, formerly his confrère. Hence it is asked:

1. What kind of obligation arises from perpetual vows of religion?
2. Who can dispense from religious vows, and is a cause required?
3. If a fictitious cause is alleged, is the dispensation valid?
4. What is to be said of the case?

SOLUTION

1. What sort of obligation arises from the perpetual vows of religion?

By his vows a Religious binds himself to observe poverty, chastity, and obedience, and moreover to persevere to the end in the observances of religious life according to the rule of his order. These obligations are grave of their own nature, but sins against the vows may be venial from lightness of matter or imperfection of the act.

2. Who can dispense in the vows of religion, and is a cause required for dispensation ?

The substantial vows of religion taken in an order approved by the Holy See are reserved to the Holy See, and can only be dispensed by the Pope or by his authority, and for grave and just cause. Such cause is the good of Church or State, or the notable good of the Religious himself.

3. If a fictitious cause is alleged for a dispensation, is this valid ?

No; the Pope acts in the name of God to whom the vows are made, and he can not dispense them unless for a sufficient cause. Hence if a false cause is assigned as a reason for dispensation, the dispensation is void.

4. The case. Caius, a regular and a priest, on account of the difficulties he met with in his order, asked for his dismissal. At first his superiors refused his request and urged him to persevere. At last, however, by repeatedly making his request he obtained his dismissal, but after some time he became so uneasy in conscience about the way he had obtained it, that he went to Julius, a confessor of the order which he had left, and consulted him on the matter. Julius will tell Caius that there may have been fault in the determined obstinacy with which he demanded his dismissal. But we must presume that Caius acted in good faith, and did not give fictitious

reasons for obtaining his dismissal. On that hypothesis he should be sorry for any fault there may have been on his part, but there is no reason why he should be uneasy about the validity of his dispensation. The difficulties which he experienced, the dissatisfaction which he felt in his state of life, and his great desire to change it, were sufficient reasons to justify his superiors in granting the dispensation, though perhaps Caius should not have asked for it.

Case 4. A Dispensation in the Vow of Poverty

Caius, born in Belgium, entered a religious order of solemn vows in the English province with the intention of devoting himself to the foreign missions. When his studies were completed, he made solemn profession, and after a year received news of his father's death in Belgium and of the legitimate portion of his father's goods falling to him according to Belgian laws. But since regulars in Belgium, notwithstanding even a solemn vow of poverty, remain capable of ownership by a pontifical dispensation, Caius doubted whether he himself could enter upon the inheritance or not. Hence it is asked:

1. What is a vow?
2. What are the effects of the vow of poverty, and which of these are from the nature of the vow and which from ecclesiastical law?
3. How is the solemnity of the vow of poverty compatible with the capacity to have ownership?
4. What is to be said of the case?

SOLUTION

1. This question is answered in "Manual of Moral Theology," vol. i, p. 246.
2. What are the effects of the vow of poverty and of these which follow from the nature of the vow, and which follow from positive ecclesiastical law?

By the vow of poverty the Religious makes a voluntary renunciation of temporal goods that have pecuniary value.

It belongs to the essence of such a vow that the Religious should not retain any independent use of such temporal goods, and the unlawfulness of such use independently of the will of the Superior is therefore a necessary effect of the vow of poverty. Ownership of property is not necessarily repugnant to religious poverty, provided that there be no independent use of it. But by ecclesiastical law the solemn vow of poverty makes the Religious incapable of possessing property as his own individually; he becomes civilly dead; individually he can neither own, acquire, or dispose of property that has pecuniary value. As a member of a corporation he remains capable of corporate ownership.

3. How is a solemn vow of poverty compatible with capacity for ownership ?

As has just been said, the incapacity for ownership is not a necessary effect of the vow of poverty by itself; it is a creature of positive ecclesiastical law. The whole distinction between solemn and simple vows, and therefore their different effects, are derived from positive law (C. un. de voto et voti redemp. in 6to). Hence if the Pope so wills it, for good reason a Religious may be under a solemn vow of poverty, and yet by special provision he may be capable of owning property, provided that he has not the independent use of it.

4. The case. Caius was born in Belgium, but entered the English province of a Religious order with solemn vows. After his profession he heard that his father was dead and that the legitimate part of his father's property had devolved on him according to Belgian law. Even solemnly professed regulars in Belgium are capable of succeeding personally to such property by dispensation, as Leo XIII declared, July 31, 1878.¹ Caius doubted whether he could accept his legitim or not. The words of the Pope's decree are: "All and each of the regulars of Belgium of both sexes, even those who have pronounced solemn vows, validly and lawfully exercised and exercise all the aforesaid acts (to acquire, retain, and administer goods, and to dispose of them)." However, Caius belongs to the English province of his order, and he can not be called a "regular of Belgium." "Moreover, the regulars of Belgium appear to be all those who are admitted into a community of Belgium," says Fr. Vermeersch.² Therefore the legitim of Caius lapses just as if he were dead.

1 Lehmkuhl, vol. i, no. 524.

2 *De Relig. Instit.*, vol. i, n. 243.

The Third Commandment

Case 1. Hearing Mass in a Convent

A certain bishop permitted a certain congregation of nuns to establish a new convent in a certain city; but, lest the faithful be absent from the one parish church, he did not wish to permit lay people to be admitted to hear Mass in the convent chapel. Sometimes, however, it would be much more convenient if guests and friends of the convent who remained for a time either within the convent itself or in a neighboring house could satisfy the precept within the convent, since the church was more than a thousand paces distant. The superioress did not wish to refer the matter to the bishop, but asked Paul, the priest who was giving the annual exercises to the nuns, what it was lawful to do in the case. He, however, asks:

1. What conditions must be fulfilled in order that the precept of hearing Mass on feast days may be satisfied?
2. What are public, semi-public, and private oratories?
3. Can bishops derogate from the common law of the Church?
4. What is to be said of the case?

SOLUTION

1. What are the conditions to be complied with in order to satisfy the precept of hearing Mass on days of obligation ?

The whole of Mass must be heard, in the proper place, with bodily presence, and with attention.¹

¹ See *Manual of Moral Theology*, vol. i, p. 258.

2. What are public, semi-public, and private oratories?

An authentic answer to this question was given by the decree of the Sacred Congregation of Rites, Jan. 23, 1899: "Moreover, it is established that public oratories are those which, by authority of the Ordinary, have been perpetually dedicated to the public worship of God, blessed or even solemnly consecrated, and have a door on the street, or from a public street open a free entrance to the faithful universally. Private oratories, on the contrary, in the strict sense are said to be those which have been erected in private houses for the convenience of some person or family by an indult of the Holy See. Those which hold a middle place between these two, as the name itself indicates, are and are called semi-public oratories."

3. Can bishops derogate from the common law of the Church?

No; Benedict XIV gives expression to this principle of canon law in several places of his well-known work *De Synodo Dioecesana*: "It is known to everyone that a bishop cannot relax a law enacted by a superior, nor impart to another that permission which he cannot grant to himself."² "The common laws, rites, and customs of the Church received everywhere can be removed or changed only by the

authority of him to whom belongs authority and power over the universal Church; otherwise an immense disturbance of ecclesiastical discipline and hierarchy would arise.”³ “Today a bishop cannot command his subjects to present themselves at the parish Mass, because he cannot abolish a custom which, since it is in force throughout the whole world, has now assumed the nature of common law.”⁴

2 Book xi, chapter 9, no. 5.

3 Book xiii, chapter 18, no. 11.

4 Book xi, chapter 14, no. 10.

4. The case. A certain bishop allowed a Congregation of nuns to found a convent with a chapel in a certain town, but he forbade them to admit lay people to hear Mass of obligation in their chapel so that the only church in the place might not be deprived of its worshipers. Sometimes the nuns had guests and friends staying either in the convent itself, or in a house in the neighborhood, and as the church is over a mile distant it would be convenient if they could hear Mass in the convent so as to satisfy the precept. The Superioress did not like to refer the matter to the bishop, but she asked the advice of Paul, a priest who was giving a retreat to the nuns, about what was lawful in the circumstances. Paul will know that inasmuch as the common law of the Church allows the faithful to satisfy their obligation of hearing Mass on Sundays and holidays in public and semi-public oratories they can validly fulfil the precept of the Church by hearing Mass in the convent chapel, as it is a semi-public oratory. However, the bishop had a perfect right to make the regulation which is mentioned in the case, and the Superioress should loyally observe it. She may presume that the bishop had no intention of making the guests within the convent go outside to the church to hear Mass, so they may be admitted to hear it in the convent chapel. Friends outside should go to the church, unless there be reason for making an exception in a particular case, and then the Superioress might avoid difficulties by arranging with the parish priest.

Case 2. Servile Work

Caius, a young Catholic who seeks a livelihood for himself by the photographic art, asks a confessor, a missionary priest in England, whether it is lawful for him to develop and finish on Sundays photographs taken on days during the week. The confessor judges that the work is servile, but, because of the young man's poverty, judges that there is cause for dispensing; he doubts, however, since he himself is only an assistant missionary, whether he is able to grant the necessary dispensation or not. Hence it is asked:

1. What kinds of works are prohibited on feast days?
2. What causes excuse from that law?
3. Who are able to dispense from the said law?
4. What is to be said of the case?

SOLUTION

1. What sort of work is forbidden on days of obligation?

Servile work, or that which used to be done by slaves, and which is now done by servants and laborers, and which chiefly employs strength of body, is forbidden on days of obligation. Common estimation and custom also have weight in deciding what is servile work. Mental or artistic work, usually done by a higher class of society, is not forbidden. Nor are occupations forbidden which are common to all ranks of society, such as traveling. But besides servile work, public buying and selling, taking oaths, and giving sentence in courts of justice, are also prohibited.¹

¹ *Manual of Moral Theology*, vol. i, p. 264.

2. What is sufficient to excuse from that law?

Dispensation granted for just cause by a competent authority, custom, the service of God, charity, necessity, and some utility of importance.¹

¹ *Manual of Moral Theology*, vol. i, p. 266.

3. Who can grant a dispensation from this law ?

The Pope can dispense any or all of the faithful from this law; bishops can dispense their subjects in particular cases, as also can parish priests. This power of dispensing their parishioners in particular cases which custom gives to parish priests may be extended to such priests in England and the United States as have the cure of souls.²

² The same work, p. 267.

4. The case. Caius, a young Catholic, made his living by photography. He asked his confessor whether he could develop on Sundays the photographs taken during the week. His confessor

thought that this would be servile work, but he also thought that the young man should be dispensed from the law on account of his poverty. He doubted, however, whether he had power to dispense him, as he was only a curate or assistant priest on a mission.

The confessor judged rightly that developing photographs in the way of business is servile work, and forbidden on Sundays and holidays. However, if the young man belongs to the mission which he serves, the confessor may dispense him, as necessity is a sufficient cause. If the necessity were grave, it would excuse him from the law without a dispensation. ‘

Case 3. Mass on Board Ship

Caius, a priest destined by his superiors for a mission in South Africa, obtains a special privilege of celebrating Mass on a ship during the voyage. He would like, however, to become more certain whether he himself is bound on Sundays to celebrate Mass in order to satisfy the ecclesiastical precept, whether he is bound to notify other Catholics who may happen to be sailing with him that Mass will be celebrated, and whether they are bound to seize the opportunity and hear Mass. Hence it is asked:

1. Under what conditions is it lawful to celebrate Mass on a ship?
2. Is there an obligation of using a privilege?
3. What is to be said of the case?

SOLUTION

1. On what conditions may Mass be said on board ship?

Mass may not be said on board ship without an Apostolic indult, which is granted only on the following conditions: “(a) That the vessel be safe and be far distant from shore; (b) that the sea be calm; (c) that there also be present with the celebrant another person, either a priest or a deacon, who, if any motion should arise from which there would be danger that the Chalice might be overturned, can rescue the Chalice from a danger of this kind with his hand.” The Sacred Congregation for the Propagation of the Faith brought these conditions to the notice of priests dependent on its authority in an instruction issued March 1, 1902, and added: “If on the ship there is no proper chapel or fixed altar, let the missionaries take every care that the place chosen for the celebration of Mass present nothing indecent or unbecoming; which would certainly occur if the most august mystery of the Altar were celebrated in cabins destined for the private uses of travelers.” This, however, must not be understood too literally, as the same Congregation explained to a certain bishop, Aug. 13, 1902: “The decree regards abuses only; the celebration in cabins, however, is not absolutely prohibited when all the circumstances remove dangers of irreverence.”¹

¹ Mocchegiani, *Jurisprudencia Eccles.*, tom. ii, n. 810 f.

2. Is there an obligation to use a privilege?

We must distinguish between privileges which are granted to a whole body, like the privilege of the forum granted to clerics, and the privilege of exemption granted to regulars, and privileges granted to individuals, like that of a private oratory. No privileged person is at liberty to forego the first; merely personal privileges of the second kind may be used or not, at the option of the privileged person, unless charity, or some other extrinsic reason, requires their use.

3. The case. Caius, a priest, was going out to the South African missions, and obtained the privilege of saying Mass on board ship. He wanted to know whether he himself was bound to use this privilege on Sundays if he could do so, whether he was bound to tell other Catholics

on board that Mass was to be said on Sundays, and whether these were bound to take the opportunity offered of satisfying the precept of hearing Mass. St. Alphonsus (III, no. 319) teaches that one who has the privilege of a private oratory is bound to use the privilege if he can not go to Church, because he is bound to hear Mass on Sundays, if he can do so without serious inconvenience. Other theologians, however, with Gury-Ballerini (I, no. 348) deny this, and apply the principle, "No one is bound to use a privilege, as it would then become a burden." The faithful, however, can satisfy the precept of hearing Mass wherever it is said, except in a private oratory, strictly so called, and on a portable altar by special privilege. If there is room in the place where Mass will be said for the Catholics on board, Caius should tell them, though he is not under a strict obligation to do so, as he has not the cure of their souls. Those who know of the opportunity will do well to make use of it if they can do so without serious inconvenience, but they are not under a strict obligation in the matter.

The Fourth Commandment

Case 1. Catholic Education of Children

Titius, a Catholic father of a family, sent his children to a Catholic elementary school, but when, as he thought, they were unjustly and cruelly beaten by the schoolmistress, and the greater part of the boys who attended the school were from the lowest class, he afterward transferred them to a school provided by public authority. In it, indeed, no religious education was given besides the reading of the Bible; but on Sundays Titius sent the boys to the Catholic church, where they were instructed in Christian doctrine. Paul, the parish priest of Titius, tries in vain to bring him to a better course, and remains doubtful whether he ought to deny him the sacraments, or what should be done in the case. Hence it is asked:

1. What right belongs respectively to the Church and to parents concerning the education of children?
2. Is there an obligation, and what kind, for parents to send their children to a Catholic school if one exists in the place?
3. When is a penitent to be judged incapable of receiving absolution?
4. What is to be said of the case?

SOLUTION

1. What rights have the Church and parents, respectively, over the education of children ?

The Church has received the right and the duty from

God to teach, train, and educate especially, all those who belong to her by Baptism. This right of the Church directly extends to religion, faith, and morals, but as these can not, in practice, be separated from education in other branches, and no attempt should be made to separate them, therefore the Church claims authority over all the education of her children. The parents by natural law have the right and the duty to bring up and educate their children, and in fulfilling this duty, as all others, Catholic parents should follow the guidance of the Church. If parents commit part of their office to others, they are bound to select those who can and will give a Catholic education to their children.

2. What sort of obligation are parents under of sending their children to a Catholic school, if there is one in the place?

The bishops of the Province of Westminster declared, in a circular read Sept. 17, 1905: "We desire to call the earnest attention of all Catholics to the grave departure from Catholic teaching and tradition, and to the very serious dangers to Catholic faith and spirit, which are involved in the placing of Catholic children, of whatever class in life, in non-Catholic schools. Owing to the usually proximate nature of these dangers, it is under ordinary circumstances a grievous sin on the part of parents to expose their children to such risks, and this has been expressly declared in the instructions of the Holy See, and of the bishops of this province. There is not infrequently also a grave sin of scandal. . . . The social advantages to be gained at certain schools manifestly do not constitute such a necessity.

No individual priest or confessor is entitled to decide where necessity of this nature exists, but the matter is one to be referred to the Ordinary of the diocese for his counsel and judgment.”

3. When is a penitent to be judged unfit to receive absolution ?

A penitent is unfit to receive absolution for his sins if he is not sorry for them, if he has not made, at least, a formally integral confession, and if he is not prepared to fulfil all his duties which impose on him a grave obligation.

4. The case. Titius, a Catholic parent, transferred his children from the Catholic elementary school to the provided school, because, as he thought, they had been unjustly and cruelly beaten by the mistress, and because the greater portion of the children were from the lowest classes. No religious instruction besides Bible reading was given in the provided school. Titius sent his children to the Catholic Church on Sundays where they were taught their catechism. Paul, the parish priest of Titius, having tried in vain to get him to send the children to the Catholic school again, is now in doubt as to whether he should refuse him the sacraments, or what he should do.

Such questions, as to whether and how far Titius was justified in his action or not, have been reserved to the bishops in the Province of Westminster. Paul, therefore, should not take upon himself to refuse the sacraments to Titius, but he should refer the case to the bishop. Objectively it will seldom be advisable to proceed to extremes with people like Titius, unless their example is likely to be imitated by many others if some drastic remedy is not found.

Case 2. A Minor Enlisting

Caius, a young Catholic twenty years of age at the University of Oxford, wishes, as a volunteer soldier, to wage war for his country in South Africa. His parents oppose him, however, because they do not wish to undergo the danger of losing their first-born son, since he is of the best character and likely to bring greater glory to their honored name. Since he cannot obtain their consent, but nevertheless burns with zeal to serve his country, he approaches Julius, his confessor, and asks whether he can enlist without mortal sin. Hence it is asked:

1. What are the obligations of children toward their parents?
2. What are the rights of parents over their children?
3. When do the obligations of children toward their parents cease?
4. What is to be said of the case?

SOLUTION

1. What are the obligations of children toward their parents?

Children are bound to love, honor, and obey their parents, and support them when they are in need.

2. What are the rights of parents over their children?

As parents have the duty of bringing up and educating their children they have the right, which corresponds to that duty, to keep their children with them, and to receive their obedience, honor, and love. They may correct a child when he requires it. A parent, as such, has no rights over a child's property, but if no guardian of the property has been lawfully appointed, the father will be considered its guardian, and he will be obliged to administer it for the benefit of his child.

3. When do the obligations of children toward their parents cease?

The obligations of children to love and honor their parents never cease. The obligation to live under their direction and control terminates with minority. In general, minority terminates when the child is twenty-one, but before that age a child who has reached the age of discretion may enter into religion, marry, and enlist in the army.

4. The case. Caius, a young Catholic at Oxford, twenty years of age, wanted to enlist in the army and serve in the South African war. He was the eldest son in a family of position, and the parents would not give their consent. He asked Julius, his confessor, whether he would sin grievously if he enlisted without his parents' consent.

In such cases, the confessor will, as a rule, act prudently by taking the side of the parents, and trying to induce the son to do as they desire. Still, if Caius insists on a theological answer to his question, Julius should tell him that he will not sin if he enlists against his parents' wish. They do not stand in

need of his assistance, and English law allows him to enlist without the consent of his parents: * Although parental authority continues until the child is twenty-one, yet public policy requires that a minor should be at liberty to contract an engagement with the State; and the parental authority is suspended, though not destroyed, by enlistment in the army.”¹ Thus positive law determines and defines the indefinite and vague law of nature concerning the time of emancipation from parental control.

¹ *Encyclopedia of Laws*, vol. v, p. 28.

Case 3. Paternal Authority Limited

Robert, a young man seventeen years of age, seeks the counsel of Titius, his confessor, concerning his obligations. For recently, as he says, he left his father's house because of frequent quarrels between his drunken father and the rest of the family; but now his father commands him to return, and Robert is in no way prepared to obey unless he is bound under grave sin. For he says that, if he returned, his father would squander in indulging his vice the greater part of the money which Robert acquires by his labor, and that, furthermore, it would be necessary for him to endure quarrels and other inconveniences between his father and himself or another member of the family, which indeed he affirms he would bear most unwillingly and only under compulsion. Titius knows Robert to be well-behaved and prepared to do everything that the Catholic religion requires in the case. Hence it is asked:

1. How long do children remain under the authority of their parents?
2. The ownership of what goods belongs to children of a family?
3. What is to be said of the case?

SOLUTION

1. How long do children remain under the authority of their parents?

The natural law requires that children should, in general, remain under the authority of their parents until they are able to take care of themselves. The age at which they are able to do this is not determined by the natural law, but is left to be determined by positive law, ecclesiastical and civil. A child is *sui juris* for the purpose of receiving baptism at seven years of age by himself, for the purpose of taking vows, or marrying at the age of puberty. By English law, children in general become *sui juris* at twenty-one, but when they have attained years of discretion (regularly fourteen for males, sixteen for females), and separation from their parents appears to be for their advantage, English law will not compel them to remain with their parents.

2. Of what property have children the ownership?

Children, by English law, are capable of owning property just like adults who have attained their majority, but they are limited in the administration of it. The administration is regularly in the hands of a guardian, appointed for the purpose, but a minor can make contracts for necessities, and necessities are understood in a wide sense to comprehend whatever is suitable to the minor's position in life.

3. The case. Robert, a youth of seventeen, asked the advice of Titius, his confessor. He left home because of the frequent broils between his drunken father and members of the family, and he is determined not to return unless he is bound under pain of mortal sin to do so. He knows that if he does return, his father will take the largest part of his wages, and spend it in drink, and that he will have to put up with the constant family broils, and this he is not prepared to do.

Titius knows that Robert is steady and will do what a good Catholic is bound to do. The confessor, as a rule in such cases, will try his best to keep youths at home till they marry or attain their majority. Still he can not tell Robert that he is bound to return home under pain of committing mortal sin. He is steady, we must presume that he is in respectable lodgings, he can support himself, and he is not bound to give his wages to his father, to be spent in drink. Under such circumstances Titius should give Robert some good advice about keeping steady and attending to his religious duties, but he should also tell him frankly that he is not bound to return home in the circumstances.

Case 4. Property Rights of Married People

Martha accuses herself in confession of stealing her husband's money, and, when the confessor asks about the circumstances, she answered that her husband earns by his labor the sum of twenty shillings every week, but gives her only ten to pay the expenses of the family, which scarcely suffice, if indeed they suffice at all, for that, while he dissipates the other ten in drinking with bad companions; furthermore, that she has been accustomed secretly to take three or four shillings from her husband's clothes, and that on this account her conscience is tormented all the more because she possesses nearly one hundred pounds sterling of her own money, which, however, she says she wishes to preserve for providing dowries for her daughters. Hence it is asked:

1. By our law does a husband acquire any right in the goods of his wife?
2. Is support owed by a husband to his wife and children from strict justice?
3. What is to be said of the case?

SOLUTION

1. Does a husband, by English law, acquire any rights in the property of his wife?

No, not by the simple fact of marriage and during the wife's life. He may acquire rights in virtue of marriage settlements voluntarily entered into; and in case the wife dies intestate the husband is entitled to hold, for his life, all the lands and tenements of which he and she were seised in deed in her right, for an estate of inheritance, and after taking out administration he becomes entitled to her chattels, personal as well as real.¹

¹ *Manual of Moral Theology*, vol. i, p. 355.

2. Is the husband bound to support his wife and children in justice, strictly so called?

Yes; this duty is laid upon him by the natural law, and by the law of the land, and when he marries his wife he undertakes to fulfil all his obligations towards her, and thus he is bound in justice by his contract to support her and her children, as well as by the Fourth Commandment.²

² The same work, p. 288.

3. The case. There is no reason why Martha's conscience should be disturbed at what she does. If she can not otherwise get what is necessary to support herself and her children, she has a perfect right to take it as she does, unknown to her husband. Nor need she be disturbed about her £100. She may keep it intact so that she may be able to give a small dowry to her daughters on their marriage, as long as the husband's wages are sufficient to support her and the family. She is not bound to spend her little hoard in order that her husband may have more to spend in drink.

Case 5. Catholics at Non-catholic Secondary Schools

Caius, a Catholic merchant in a certain large city of England, sends his son daily to a neighboring non-Catholic school. There is indeed a Catholic school almost equally near, in which an almost equally good education in letters and sciences can be had, as successful results in public examinations attest; nevertheless Caius, although asked by Julius, the parish priest, does not wish to send his son to it, because the non-Catholic school is more distinguished in fame and name, and also more celebrated for the number and condition of its pupils. In these circumstances Julius doubts whether he ought to keep Caius from the sacraments of the Church. Hence it is asked:

1. What are the obligations of parents toward their children?
2. What power does the Church have concerning the education of the faithful, and whence does she have it?
3. What does the Church teach concerning education in non-Catholic or mixed or neutral schools?
4. What is to be said of the case?

SOLUTION

1. See answer to this question in "Manual of Moral Theology," vol. i, p. 274.
2. See this question answered above, p. 212.
3. What does the Church teach about education in non-

Catholic or neutral schools?

The Church teaches that such education is in the highest degree dangerous to faith and morals; that, as a rule, it is gravely sinful to send a child to such schools for education, and that only necessity can make it lawful, provided always that the dangers be made remote and the defective religious training otherwise supplied. The declaration of the English bishops, Sept. 17, 1905, was given above, p. 213. In answer to a question put by Cardinal Vaughan concerning secondary non-Catholic schools in England, the Sacred Congregation of Propaganda, Jan. 23, 1899, wrote: "The frequentation of public schools of this kind can not be without a grave danger to faith and morals, or be held consistent with the use of those means which the Church properly prescribes for the sanctification of souls; and that therefore an obligation is incumbent on Catholic parents, not to expose their sons to this grave danger." See "Tablet," June 22, 1901, p. 991. Other declarations of the Holy See and of the bishops are given in Fourth Council of Westminster, decree 17, and in the Third Plenary Council of Baltimore, pp. 99, 279.

4. The case. Caius, a Catholic merchant of a large city in England, sent his son to a non-Catholic day school, though there was an equally good Catholic school as near. Julius, his parish priest, asked him why he did not send his son to the Catholic school. Caius answered that the non-

Catholic school had a better reputation and that the number and standing of the boys were higher. These reasons do not justify Caius in his action, all the less because it may give scandal to others. But as was said above (p. 214) Julius should not deny him the sacraments without consulting the bishop.

Case 6. Not a Living Wage

Albert, a young German, came to London, where he obtained the position of a clerk in a certain large commercial house. But since he knew neither the English language nor the duties to be performed sufficiently, he was received on the condition that he would be content with a salary of twenty pounds for each year. He intended, after one or two years, enriched by experience of the English manner of business, to return to his own country, and hence accepted the condition. In the meantime, however, sometimes pressed by great straits, since twenty pounds in no way sufficed to support him, he sought counsel and help from a certain Catholic priest, who doubted whether Albert might take something more, even secretly, in the name of a just wage. Hence it is asked:

1. What are the mutual obligations of masters and workers?
2. What is a just wage?
3. What is to be said of the case?

SOLUTION

1. This question is answered in "Manual of Moral Theology," vol. i, p. 289.
2. What is a just wage?

This question may be answered in the words of Leo XIII, who in his "Encyclical on the Condition of the Working Classes," May 15, 1891, says: "Let it be then taken for granted that workman and employer should, as a rule, make free agreements, and, in particular, should agree freely as to the wages; nevertheless, there underlies a dictate of nature more imperious and more ancient than any bargain between man and man, namely, that the remuneration must be sufficient to support the wage-earner in reasonable and frugal comfort. If, through necessity or fear of a worse evil, the workman accept harder conditions because an employer or contractor will afford him no better, he is made the victim of force and injustice."

3. The case. Albert, a young German, came to London and obtained a post as clerk in a merchant's office. As he knew English very imperfectly and was new at his duties, a salary of £20 a year was offered him. He intended to learn the English method of business, and; in a year or two, go back to Germany, so he accepted the terms. He soon found that he had not enough to live on, and sought the advice and help of a Catholic priest, who doubted whether Albert might not secretly take something more than £20 to make up a living wage.

No; Albert will not be justified in occultly compensating himself and taking in secret more than he agreed to take. He was in reality only an apprentice at the post, his work was not worth more than £20 a year, and the experience he gained made up for what might have been wanting in the amount of his salary. The general rule laid down by Leo XIII does not apply to special cases like this. Albert should get assistance from home, or in some other way; he is not the victim of injustice, and he can not resort to occult compensation.

The Fifth Commandment

Case 1. Unlawful Precautions

Caia, the wife of Caius and of infirm health, heard from a physician that at her next delivery the next offspring would very probably be death to her. Hence she was placed in distress, for she does not wish to deny the debt to her husband, but if she grants it, she will bring death upon herself. Therefore she goes to a physician of certainly not the best reputation and buys a medicine by which, taken once each month, she will be rendered safe, as the physician says, from the danger of future offspring. An outcome happy from her point of view proves the physician's knowledge, but nevertheless also casts scruples into Caia as to whether it is lawful to take such a medicine, and she approaches her confessor to resolve them. Hence it is asked:

1. How are the direct and indirect killing of a human being distinguished? And is it lawful to kill an innocent person?
2. In a case in which either the mother or the fetus or both are certainly going to perish, is it ever lawful to procure abortion? Even of an inanimate fetus?
3. What is to be said of the case?

SOLUTION

1. How is direct distinguished from indirect homicide, and is it ever allowable to kill the innocent? Homicide is direct when it is intended, and it may be intended either explicitly or implicitly. It is intended explicitly when the homicide wishes to cause death; it is intended implicitly when an action is intentionally put which can not but cause death. Thus one would directly cause death who kept another under water for some time, though his primary intention might have been not to kill him, but to prevent him from calling out. On the other hand, homicide is indirect when it is not intended, though it is foreseen that it will follow from some act which is put for another purpose. It is never allowed to kill the innocent directly; it is allowed to do so indirectly, for a great and proportionate cause.
2. In a case where either the mother or the fetus, or both, must necessarily perish, is it allowable to procure abortion at least, if the fetus has as yet no soul?

Following the common opinion, we may put aside, as antiquated, the hypothesis of a living fetus not yet informed by a human soul. The human soul is infused into the fetus at the moment of conception, according to the common opinion. The answer, then, to the question proposed will be that it is never allowed to procure abortion of the immature fetus directly, since it is never allowed to kill the innocent directly. If the fetus, though not quite mature, may probably be saved, as it may be after about the seventh month or even earlier, by artificial means, it will be lawful to bring it to the birth for a reason grave in proportion to the danger incurred. Indirect abortion, like indirect killing of the innocent, is allowable for a sufficiently grave reason.

3. The case. Caia did wrong in taking medicine to prevent having another child. If the medicine acted so as to prevent conception, she sinned mortally; for as St. Alphonsus teaches (III, no.

394): “It is never lawful for a mother, on account of any danger whatsoever, to take a potion to impede conception.” If the medicine acted on the fetus after conception, Caia was guilty of infanticide. Her confessor should tell her that she is justified in refusing her husband, supposing the danger to life to be real, but that she may also allow him marital rights and commit herself to God’s providence. The latter course may be adopted with greater security than the advice of some doctors would lead one to suppose.¹

¹ See Génicot, *Theol. Mor.*, vol. ii, nn. 551, 553.

Case 2. Medical Abortion

Caia, a Catholic mother of a family and already four months pregnant, was suffering from almost continual vomiting. The physician summoned to her declared that the indicated remedy for the vomiting was abortion, and that unless she procured it, she herself with the fetus would most certainly die within one or two months. If abortion were procured in time, the fetus could be baptized, and the mother herself would very probably be saved. Caia asked her confessor whether in the stated circumstances she could bring about abortion. Hence it is asked:

1. By what principal arguments is it defended that abortion is lawful in order to save the mother?
2. How is it proved that abortion is always intrinsically evil?
3. What is to be said of the case?

SOLUTION

1. What were the chief arguments by which it was argued that abortion is allowed in order to save the mother's life?

We are not concerned here with the arguments used by materialists, who look upon the child before birth as a portion of the mother which may be destroyed if it threatens her life, and see no difficulty in killing one in order that the other's life may be preserved when both can not be saved. We are only concerned with theologians, some of whom thought that in such cases as we are now discussing medical abortion may be permitted. They defended this view on the following grounds: Abortion is usually caused by puncturing the membranes, and this may be done to relieve the mother when pregnancy is threatening her life, though the puncturing also causes abortion and the consequent death of the fetus. In a collision between the right to life of the mother and that of the fetus, the fetus may be said to cede its right in favor of the mother, especially as otherwise both would perish, and the fetus would not be baptized; whereas if aborted, it can be baptized.

2. How is it shown that abortion is always intrinsically wrong?

Direct abortion is always intrinsically wrong because it is direct killing of the innocent. For to cause abortion is to deprive the fetus of the medium in which alone its life can be preserved, which is to kill it directly just as much as thrusting a man under water or into a chamber exhausted of oxygen is killing him directly. As, then, the puncturing of the membranes is the direct killing of the fetus, it is not allowable, even when necessary to save the life of the mother; for evil may not be done that good may come. Nor can the fetus renounce its right to life in favor of the mother, and permit itself to be killed directly; for not man but God alone is the Lord of life and death. In a collision of rights the owner of the better right takes something to himself which is his; his better right gives him no title to take away that which is another's, and so collision of rights can not be applied to justify direct abortion; it takes away the life of the innocent victim.

3. The case. From what has been said it is clear that Caia may not consent to abortion, as the fetus is not viable. She must ask the doctor to prescribe some other remedy or palliative which will at least save her conscience if not her life. This solution is confirmed by the decree of the Holy Office, July 24, 1895, which declared that such medical abortion as is described in this case is not lawful.¹

¹ See Lehmkuhl, *Theol. Mor.*, vol. i, n. 844, ed. 9.

Case 3. Mutilation Unlawful

Anna, a Catholic and married, because of deformity of the body is unable to bring forth offspring by the natural way. Hence the first was extracted by craniotomy, the second was brought forth alive by a Caesarean operation, and the third will come forth into the light after a short space of time; the surgeon wishes to extract it and at the same time to prevent future dangers by the operation which is called after Porro or Tait-Porro, by which the infant together with the uterus and appendages is removed by abdominal section. Anna therefore consults her confessor whether it is lawful or necessary to undergo the said operation. Hence it is asked:

1. Is a mother bound to lose temporal life in order to procure eternal salvation for her offspring?
2. Is the mutilation of a human being lawful?
3. Does Anna lawfully engage in married life?
4. What is to be said of the case?

SOLUTION

1. Is a mother bound to give her life for the eternal salvation of her child?

Yes; per se it is a general rule of charity that we must be prepared to sacrifice our temporal life for the eternal salvation of our neighbor, as St. John teaches: "We ought to lay down our lives for the brethren."¹ This obligation, however, does not arise frequently, because in ordinary circumstances the necessity for doing so is not certain, nor is the expected result certain.

¹ 1 John iii. 16.

2. Is it lawful to mutilate a man?

No; except in so far as it is necessary to preserve the man's life, or unless it is commanded by competent authority in punishment of crime, according to the law of the country. Otherwise as man is not the owner of his life or limbs, but the ownership of them belongs to God, man can not dispose of life or limb, because he can not dispose of what does not belong to him.

3. Does Ann lawfully lead a married life?

As she cannot bring forth children in the ordinary way it would have been better if she had never married, and even now that she is married it would be better if, by mutual consent, husband and wife abstained from marital intercourse. However, there is no strict obligation to abstain, as if children are conceived, they can absolutely be delivered either by Caesarian section, or perhaps after the seventh month by bringing on premature labor, without killing either mother or child.

4. The case. The operation of craniotomy on the first child was unlawful if the child were alive, for it is the direct killing of the innocent. Caesarian section, of course, is lawful in such cases of necessity. The operation called Tait-Porro is also lawful if it is necessary in order to save the

mother's life, "provided that serious and timely provision be made, as far as possible, for both the life of the fetus and that of the mother." If it is not necessary, and if ordinary Cesarian section would suffice, then it is unwarrantable mutilation of a human being.

Case 4. Ectopic Gestation

Titius, a young Catholic physician, asked Paul, his confessor, whether he could safely follow the doctrine commonly handed down in medical schools concerning the manner of treating ectopic fetuses. For sometimes a fetus is conceived outside the uterus and begins to grow, and it cannot always be distinguished from a tumor. Its growth, however, constitutes a grave danger to the mother, especially when the enclosing membrane is ruptured. According to the doctrine handed down in medical schools, an electric fluid is introduced into the cyst, and thus the fetus, if any is present, is deprived of life, ceases to grow, and the mother's life is saved. Titius therefore wished to know whether it is lawful to act thus, and, if it is not lawful, what must be done when the mother's life is endangered by a tumor which probably is an ectopic fetus, or which certainly is an ectopic fetus. Hence Paul asks:

1. What is an ectopic fetus, and why is it dangerous?
2. How are the direct and indirect killing of a human being distinguished, and when is it lawful?
3. What is to be said of the case?

SOLUTION

1. What is an ectopic fetus and why is it dangerous? The proper place for the fecundated ovulum to settle and grow to maturity is the uterus, but sometimes it remains in the ovaries, sometimes in the Fallopian tubes, sometimes it falls into the abdominal cavity, and in these cases it is called ectopic or extrauterine. An ectopic fetus can not be delivered in the ordinary way, and its growth becomes a serious danger to the life of the mother, chiefly on account of blood vessels being ruptured in the mother's body by the continual growth of the ectopic fetus.
2. The first part of this question is answered above, p. 226.

Direct homicide is lawful by public authority in punishment of crime, or in a just war, and by private authority in self-defence. Indirect homicide may be permitted for some object of great importance.

3. The case. It is obvious that if an ectopic fetus is living, it will be direct and unlawful homicide to kill it with electricity. If it is uncertain whether a cause of danger to a woman is an ectopic fetus, or a tumor, or some other growth, laparotomy may be performed and the cause of danger removed as soon as the danger becomes imminent. For in that case the certain danger of the woman must be considered and guarded against in preference to the danger to the life of a fetus which is only probable and perhaps non-existent. Even when the danger certainly comes from the presence of an ectopic fetus, the same operation may probably be performed when its growth causes the danger to the mother to be imminent and the fetus is already viable.¹

¹ See Antonelli, *Medicina pastoralis*, vol. i, n. 338; Lehmkühl, *Theol. Mor.*, vol. i, n. 1011, ed. 11.

On the other hand, when abortion is procured directly, the fetus is killed directly, and this is never lawful.

The Sixth Commandment

Case 1. Lectio Periculosa

Titia, of a very nervous temperament, confessed that she had rather often suffered grave movements against chastity. When the confessor asked whether they were voluntary, Titia answered that she had by no means consented to evil pleasure, but nevertheless had given cause to those movements by reading slightly bad romantic books and by not restraining her eyes from looking at animals mating. The confessor doubts whether Titia sinned gravely, whether she is bound to declare the number and lowest species of those sins, and whether she is bound in the future to abstain from similar things under penalty of the denial of absolution. Hence it is asked:

1. What is lust, and in what does its malice consist?
2. Is smallness of matter found in sins of lust?
3. From what is the malice of sins which are voluntary only in their cause to be measured?
4. What is to be said of the case?

SOLUTION

1. What is lust, and in what does its malice consist?

Lust is an inordinate appetite for sexual things. Sexual things, however, are ordered to the generation of offspring, which must take place only in marriage. Hence every use of sexual things which takes place outside marriage, or in marriage but contrary to its laws, is inordinate and sinful.

2. Is smallness of matter found in sins of lust?

Lust directly sought or admitted is gravely unlawful and does not admit smallness of matter. Indirect lust, however, admits smallness of matter.

3. From what is the malice of sins which are voluntary only in their cause to be measured?

Sins which are voluntary only in their cause have the malice of that cause, for they are formally evil to the extent that they are voluntary, but by hypothesis they are voluntary only in their cause.

4. What is to be said of the case?

Titia rather often suffered grave movements against chastity from reading slightly bad romantic books and from looking at animals mating. She did not, however, consent to those movements, and it is supposed that Titia did not indulge in the reading and the sights in order to procure those evil movements for herself. The confessor doubted whether Titia had sinned gravely or not. It is not established that Titia sinned gravely, because the immodest movements were voluntary only in their cause, but the causes were only slightly bad; hence Titia sinned only lightly. Therefore she is not bound in confession to declare the number and lowest species, nor to abstain from similar things in the future under penalty of the denial of absolution. Nor did Titia expose herself to the proximate

danger of sinning gravely, insofar as, although rather often tempted, she never fell gravely. Nevertheless, she is certainly to be exhorted, and is bound under pain of venial sin, to abstain from such actions, especially since in lust a light indulgence easily declines into grave excesses.¹

¹ Bucceroni, *Theol. Mor.*, vol. i, nn. 37, 40, 822.

Case 2. Lectio Librorum Romanticorum

Caia, a girl sixteen years of age, is accustomed to read romantic books which, although they are not bad, are nevertheless very diffuse in describing love affairs. While she reads, evil thoughts and even impure carnal movements are accustomed to arise, but for the most part she does not consent to them, although she continues to read because other girls read such books and she wishes to pass the time. Once or twice, however, she consented to the pleasure arising from the evil movements, and once she sinned by touching herself immodestly; she afterward confessed these sins by saying that two or three times she had procured immodest pleasure for herself, without adding anything else. Hence it is asked:

1. Is venial sin from smallness of matter to be admitted in sexual matters?
2. Is anyone bound to avoid the cause of evil movements?
3. Are immodest touches and looks distinguished in species from one another and from consummated acts of lust?
4. What is to be said of the case?

SOLUTION

1. Is venial sin from smallness of matter to be admitted in sexual matters?

No, if sexual pleasure is directly sought or admitted, as was said above, p. 237.

2. Is anyone bound to avoid the cause of evil movements?

It is supposed that consent is not given to those movements. If the cause produces evil movements accidentally and is useful and not dishonorable in itself, then there is no obligation to avoid such a cause. But if it is a cause lightly dishonorable in the genus of lust, it is to be avoided under pain of venial sin; if it is gravely dishonorable in the same genus, it is to be avoided under pain of grave sin, unless there is a just and proportionate honorable reason for positing that cause.

3. Are immodest touches and looks distinguished in species from one another and from consummated acts of lust?

Those imperfect acts are certainly distinct from perfect and consummated acts, just as a building begun is distinguished from the same building completed. Whether those same imperfect acts are distinguished among themselves in the genus of lust is disputed. Several affirm it, because the objects of those acts are diverse and the acts themselves proceed from diverse faculties. Others, however, with St. Thomas, deny it, because those acts are not evil precisely in themselves, but by reason of the evil pleasure which arises from them. But the pleasure which arises from all those acts is the same. Hence the acts also, insofar as they are evil in the genus of lust, have the same specific malice.¹

4. What is to be said of the case?

The reading in which Caia indulges is not bad, nor by hypothesis is it a proximate occasion of sin; hence, although it is accustomed to produce evil thoughts and evil movements in Caia, she is not strictly bound under sin to avoid it. Nevertheless, by way of counsel, indulgence in such reading should be sparing, since there are very many other books which are more useful and not liable to the same danger, and more suitable for cultivating the mind. Caia, however, at least probably satisfied the obligation by the manner in which she confessed the non-consummated sins of lust, according to what was said above.

Case 3. Visitationes Sponsorum

Albert, a young Catholic, comes to confession and explains that he is betrothed to Bertha, likewise a Catholic. He visits her often and not rarely then sins by evil thoughts and desires; indeed, three or four times a week he has been accustomed to walk alone with her alone, when, he confesses, it has happened that he kissed her, embraced her, and sometimes touched her shamefully. When the confessor questions him further, he explains that these things have happened in almost the same way for a year. The confessor is placed in the greatest distress about what, finally, is to be done, whether he ought to prohibit the visits themselves, or whether it suffices to give some counsel. Hence it is asked:

1. Is lightness of matter to be admitted in sins of lust?
2. With respect to the unlawfulness of actions, does the same rule apply to those betrothed for future marriage as to unmarried persons in matters of lust?
3. What is to be said of the case?

SOLUTION

1. See the answer to this question above, p. 237.
2. With respect to the unlawfulness of actions in the matter of lust, does the same rule apply to those betrothed for future marriage as to unmarried persons?

Those betrothed for future marriage, insofar as they are not yet joined in marriage, have no right to sexual pleasure, and therefore they must abstain from it and from those acts which are proximate occasions of sexual pleasure, just as unmarried persons must abstain from the same things.

Nevertheless, they are on the way to marriage, which condition gives a right to honorable means by which mutual love is fostered and manifested. Hence visits, conversations, letters, as well as kisses according to the honorable custom of the place, and other signs of mutual love, are permitted to those betrothed for future marriage. If those signs in a particular case are proximate occasions of sin, an effort must be made that, with remedies applied, they become remote, and that the marriage be entered into as soon as possible.

3. What is to be said of the case?

Albert is accustomed to sin by thoughts and desires when he visits his betrothed, Bertha. Three or four times a week he is accustomed to walk alone with her alone, and then to kiss her, embrace her, and sometimes touch her shamefully. These things occurred for almost a year.

The confessor must first urge the penitent that the marriage be entered into as soon as possible. In the meantime, there must be abstention from acts wholly unlawful, such as immodest touches, evil thoughts, and desires. The confessor cannot forbid visits and conversations. Walks of the man alone with the woman alone, provided they take place on public ways or with a female companion of Bertha

added, could be tolerated because of custom and because of the almost insuperable difficulty of breaking them off. Albert is to be admonished to treat Bertha, his betrothed, with reverence if he wishes to find the same woman faithful as a wife.

The Seventh Commandment—Justice and Injustice

Case 1. An Ingenious Verger

Titius, the verger of a certain church, lets seats to the faithful for the parish priest. Caia had rented one of the principal seats, but she passed the summer season in distant regions. According to custom, other members of the faithful occupied Caia's seat in her absence. Julia comes to Titius seeking a seat to be rented during the summer; he denied that any was vacant except Caia's seat, which she could have, in Caia's absence, upon payment of a fourth part of the whole annual price and without Julia's name being put in place of Caia's. Titius retained for himself the money paid by Julia as the fruit of his industry, as he says. But when the parish priest discovered Titius's transaction by accident, he proposed the theological question whether he had acted justly. Hence it is asked:

1. What is a right which constitutes the object of commutative justice?
2. How are the fruits of a thing distinguished, and to whom and by what right do they belong?
3. What are ecclesiastical goods, and are the offerings of the faithful to be numbered among them?
4. What is to be said of the case?

SOLUTION

1. What is a right which constitutes the object of commutative justice ?

A right is a moral power of having, doing, or exacting something.¹

¹ *Manual of Moral Theology*, vol. i, p. 343.

2. How are the fruits of property distinguished, and to whom and by what right do they belong?

Fruits of property are natural, industrial, mixed, and civil. Natural fruits of the soil, for instance, due alone to its natural fertility, belong to the owner of the soil. Industrial fruits, due to man's labor, belong to the laborer. Mixed, or partly natural, partly industrial, should be divided equitably between the laborer and the owner of the soil or other property which produces the fruits. Civil fruits, such as rent and interest, belong to the owner of the property rented or borrowed. These rules follow from the nature of the right of property, and so they belong to the natural law.²

² The same work, pp. 374, 401.

3. What is ecclesiastical property, and are the offerings of the faithful ecclesiastical property?

Property which belongs to the Church, or to a religious corporation, or to a pious institute founded by ecclesiastical authority, is called ecclesiastical property. The private property of clerics is not ecclesiastical property. Whether the offerings of the faithful are ecclesiastical property or the private property of the clergy depends partly on the intention of the donors, partly on Church law, which for Britain and the United States of America is contained in the Second Council of Westminster, d. 8, according to the constitution of Leo XIII, *Romanos Pontifices*, May 8, 1881.³

3 The same work, p. 363.

4. The case. Titius, the vergier of a certain church, let out the seats to the faithful for the parish priest. Caia hired one of the first, but as she was absent in the summer months her seat in her absence used to be given to others. Julia wanted to hire a seat for the summer months and Titius let to her Caia's on condition that Caia's name was not removed and that Julia paid what was equal to a fourth part of the annual rent of the seat. Titius kept this sum for himself as the fruit of his industry.

Titius has no right to the money, and he should hand it over to the parish priest. According to the Second Council of Westminster, bench rents form a part of the property of the Church, and so whatever Caia's seat brought in either from Caia herself, or from Julia, or from anybody else, was Church property, and could not be appropriated by Titius without sacrilege.

Case 2. Boycotting

Julius, who applies himself to the study of moral theology, recently read in a certain newspaper an article which seems to defend the lawfulness of the action called “boycotting,” in order to prevent another from renting lands from which a previous tenant had been expelled by the landlord. For those who apply a “boycott” in the case do nothing violent; each indeed, as a result of a conspiracy, abstains from all association, except in a case of extreme necessity, with those who rent the lands, in which manner of acting nothing is discovered which is not conceded to physicians and others who do not associate with brethren who do not observe the rules of the profession. Hence it is asked:

1. What is a right, and how are rights divided?
2. What is the foundation of a right, or whence do human beings possess rights?
3. Is the saying true—It is lawful for several persons as a result of a conspiracy to do what is lawful for individuals?
4. What is to be said of the case?

SOLUTION

1. What is a right and how are rights divided?

A right is a moral power of having, doing, or exacting something. Rights may be divided in a great many ways, but for the purposes of this case it will be sufficient to mention natural rights, such as the right to live and to hold property, rights due to positive law, such as the right of prescription, and rights arising out of contract.

2. What is the foundation of right, or whence do men get their rights?

The foundation of natural rights is man’s rational nature, which is ordered by God his Creator to eternal blessedness with God. The duty is imposed upon man by his Creator of working toward the attainment of the end for which he was created; he has consequently the right to fulfil his destiny unhindered by any one else. This is the ultimate foundation for all man’s natural rights. Positive law is the foundation of rights derived from that source; and voluntary agreement that of rights arising from contract.

3. Is the saying true: Whatever individuals are allowed to do may be done by many in conspiracy with one another?

In general it is, but sometimes it becomes unlawful because the very fact of numbers acting together in conspiracy causes hardship to others, or interferes with their rights. Thus individuals have a right to walk through a crowded thoroughfare, but it does not follow that a large number of people may form themselves into a compact body and march, so as to interfere with the traffic.

4. The case. Those who boycott another abstain from all intercourse with him and prevent others from having any intercourse with him with a view to compelling him to leave a place or occupation to which he has a legal right. Thus they violate his natural right of liberty to settle and employ himself as he chooses, provided that he does not violate just laws nor the rights of others. They also violate the right that he had acquired by contract with the owner of the property which he hired. Boycotting is also against charity on account of the hardship which it causes and the practical exclusion of the boycotted party from human society. It also interferes seriously with public order and peace. Doctors, lawyers, and others belonging to like voluntary associations have a right to make rules for their mutual protection, and any one who enters such profession may be required to conform to the established rules. If they will not do so, they may be professionally ostracized. Such ostracism, however, is only partial; it is applied for good reason to compel uniformity for the common good; it is very different from the ordinary boycott, which takes away rights, the enjoyment of which is necessary for human life.

Case 3. A Wrongly Provident Pauper

Caius, a very poor old man, unexpectedly received by fortune a legacy of one hundred pounds sterling, but he resolved not to spend it for his own support, but rather to hand it over to his friend Julius so that after his death the latter would take care that Masses were celebrated for his soul. Afterward Caius entered a workhouse, alleging that he was destitute of the means of supporting himself, and there lived for a year at public expense.

After his death, Julius, in order to execute the trust, handed the money to a certain priest, who nevertheless doubted whether he could accept it all or not. Hence it is asked:

1. Did Caius in the case offend against commutative justice?
2. Was it lawful for Julius to execute the trust?
3. What is to be said of the case?

SOLUTION

1. Did Caius sin against commutative justice in the case?

No; he did wrong in giving the legacy to a trust with instructions to apply it to have Masses said for him after his death. He should have spent it on his own support during life. Still the transaction was valid, much as if he had spent the legacy on drink or other pleasures; the wasteful expenditure would have been valid. After he has disposed of the money, however wrongfully, he goes to the workhouse, and there his support is given him not conditionally but absolutely, for in truth now he has nothing to live upon.

2. Was Julius allowed to execute the trust?

Julius should not have undertaken the trust, for the effect of it was to throw on the rates one who might have supported himself easily for another year at least. Julius therefore was guilty of co-operating in a fraudulent transaction. We have no data for deciding whether Caius and Julius were in good faith, probably they were; but we are considering merely the objective aspects of the case. After the death of Caius, of course, Julius was under an obligation of handing over the money for Masses according to the instructions of Caius.

3. The case. The priest could receive the money according to the intentions of Caius, who had the power to make a valid transfer of it to him, and who did so. If Caius was in debt at his death, the debts should be paid out of the legacy, but there are no indications that this was the fact.

Case 4. An Avaricious Priest

Titius, a missionary in England and not exempt from every suspicion of avarice, is in no way content with the sum of money which, according to a custom of the diocese approved by the bishop, is offered by the faithful in consideration of the administration of the sacraments and other functions. Indeed, unless at least the richer persons pay a sum twice as large as that assessed, he reproaches them most harshly, saying that they defraud him and the Church of God. Therefore he exacts from the richer persons two shillings instead of one for a baptism, and in a similar manner increases the other stole fees. During the time of spiritual exercises, however, he begins to doubt whether he has thereby contracted any guilt, and even a burden of restitution, or not, and therefore questions the Father who gives the exercises concerning his doubts. It is asked:

1. How are the goods of clerics divided, and what right regarding them belongs to clerics in England?
2. Can stole fees in England be exacted under the title of commutative justice?
3. Does anyone sin against commutative justice who exacts something beyond the diocesan assessment by reason of stole fees?
4. What is to be said of the case?

SOLUTION

1. How is the property of clerics divided and what rights have clerics therein in England ? Clerics have property rights like other people, and what they have inherited as private persons or what has been given to them personally is called their patrimony. Quasi-patrimony is what they have acquired by their own labor, either in their clerical capacity as stole fees, stipends for Masses, etc., or otherwise. Savings are what they might have spent on their own support by living up to the ordinary standard, but which they have saved by living frugally. What is derived from all these sources is the private property of the cleric, and like other people he may dispose of it as he chooses. What the cleric derives from his benefice, if he has one, is called ecclesiastical property in the narrower sense. This the cleric may spend on his decent support, but what remains over must by ecclesiastical law be spent on pious causes. In England there are very few benefices; the clergy live on the income of their churches, and besides their support they are paid a small salary from the same or some other source.¹

¹ *Manual of Moral Theology*, vol. i, p. 361 and following.

2. May stole fees be demanded in England on the title of commutative justice ?

Yes, for stole fees form part of their means of support, to which the clergy have a strict right in justice, as St. Thomas teaches.²

² *Summa*, II-II, q. 100, a. 3.

3. Does he sin against commutative justice who exacts a stole fee higher than what is fixed by the bishop?

Yes; because the regulations of the bishop constitute his title to demand a stole fee; he has no title to demand one higher than what the bishop has fixed ; and so if he does this, he takes what does not belong to him, unless it is given freely.

4. The case. Titius was not justified in demanding more for stole fees than the custom of the diocese warranted.

If by his manner he forced the faithful to give double of what the bishop had sanctioned, he sinned against commutative justice and is bound to make restitution of what he has taken in excess of the usual sum. He may be excused from making restitution to such as gave the larger sums grudgingly indeed, but still not altogether forced against their will.

Case 5. Title by Finding

Caius bought an antique cabinet from a dealer in old goods and handed it over to Julius, a workman, to be repaired. But while Julius was applying himself to the work, he found in a certain secret compartment a banknote whose value was five pounds sterling; from various indications it was evident that the money had lain hidden there for a long time, but Julius doubted whether he could retain it as his own or not. Hence it is asked:

1. Is finding a title of ownership, and under what conditions?
2. Is the title of the former owner of the thing found extinguished by prescription?
3. What is to be said of the case?

SOLUTION

1. Is finding a title to ownership and on what conditions ?

Finding of things of value which have no owner is a valid title to ownership if the finder takes possession of them with the intention of making them his own. Things recently lost, which have an owner although he is unknown, may be taken possession of by the finder, who should then use ordinary diligence to find the unknown owner. If the owner be discovered, his property must be restored to him. If he can not be discovered, after a reasonable time the property belongs to the finder.¹

¹ *Manual of Moral Theology*, vol. i, p. 371 and following.

2. Is the title of the previous owner of lost property destroyed by prescription ?

The answer to this question will depend on the law of the country. Prescription of a longer or shorter time gives a title to movables according to canon law and the civil law of most modern nations. According to English law ownership in movables can not be acquired by prescription, which is only recognized as a title to certain rights for the most part in another person's land.

3. The case. Caius bought an old bureau and sent it to a workman, Julius, to mend. Julius found in a secret drawer of the bureau a five-pound note which had obviously been there for a long time. Julius was in doubt as to whether he could keep the note.

We may suppose that the note was in the drawer when Caius bought the bureau, and that neither seller nor buyer knew of its existence. From all appearances it had lain there for a long time. If there was any reasonable chance of discovering the owner of the note, however long ago it was lost, steps should be taken for that purpose. But usually it is not easy to trace the history of such pieces of old furniture, and if this is true of the bureau in question, it would be practically impossible to find the original owner of the bank-note. Julius may, then, say nothing about his find and keep it.

Case 6. Patent-right

Caius, the procurator of a certain college, heard that a certain Titius was selling Welsbach Incandescent Burners at a much lower price than that at which they were sold by the company to which the exclusive right of selling them had been granted by civil law. Although he suspected that Titius was violating civil law, Caius bought a large quantity and thus notably reduced the expenses of the college. When Julius, the procurator of another college, had heard this, he accused Caius of injustice because he had violated not only civil law but also the natural law which concedes to all the fruits of their own industry. Greater weight was added to his opinion after Titius, having been summoned into court, was condemned to a large sum of money by way of compensation; hence Caius began to be solicitous about his own obligations. It is asked:

1. What is a patent-right, and what is established concerning it by English law?
2. Is that right from natural law or from positive law?
3. How do civil laws which grant some right affect conscience?
4. What is to be said of the case?

SOLUTION

1. What is patent-right and what does English law lay down about it ? Patent-right is the exclusive right for a term of years to the proceeds of an invention. The term, according to English law on certain conditions, is fourteen years, and this may be extended to a further term of seven or fourteen years, if the inventor has not, at the end of the first term, reaped the full benefit of his invention, and his patent is for the public benefit. In the United States the term is seventeen years.
2. Is patent-right of natural or positive law ?

The question is disputed among jurists and divines. The better opinion is that natural law grants the right in an imperfect and indeterminate way, and that it is determined by positive law.¹

¹ *Manual of Moral Theology*, vol. i, p. 347.

3. How do civil laws which grant a right affect the conscience ?

The civil laws which define and determine natural rights or obligations bind the conscience under sin, for they derive their force chiefly from the law of nature which they determine. With regard to other civil laws much will depend on the intention of the legislator. With reference to English-speaking countries we shall probably not be far wrong if we say that positive laws which confer a right which is not derived from the law of nature, such as prescription, may be interpreted in this sense; the party whom the law favors may use the right granted, but if he does not move in the matter, there is no obligation on the party burdened voluntarily to yield it to him.

4. The case. Patent-right is rooted at least in natural law though it is determined by positive law. Hence Titius violated justice by infringing the rights of the company which owned the patent of Welsbach Incandescent Burners. But when the cheap burners were being publicly offered for sale, Caius was justified in buying them at the market price. He was under no obligation to defend the rights of the patentee. There is no reason, then, why his conscience should be disturbed, even after the lawsuit. Titius will make compensation for the loss which the company has suffered. Nor does Caius commit sin by co-operating with the sin which Titius commits by selling the burners, for as I may for grave reason borrow a loan at usurious interest, although by lending it the usurer sins, so the burners might be bought though not sold without sin.¹

¹ St. Alphonsus, book ii, treatise 3, no. 47.

Case 7. Copyright

Titius reads in a certain newspaper that a new edition has been published in the United States of America of a certain book written some years before by an English bishop and published in London. The said bishop, however, complained that his permission had not been sought for the book to be published anew, and indeed that the edition had been made contrary to literary honesty and courtesy. Titius therefore asked a certain theologian whether it was also contrary to moral honesty and justice. Hence it is asked:

1. Is there from the law of nature an exclusive right to publish one's own book again?
2. If municipal law grants that right to the author, does it pertain to conscience not to violate the law?
3. What kind of right is granted by English law in this matter and by the law of the United States?
4. What is to be said of the case?

SOLUTION

1. Is copyright of natural law?

It is a disputed point whether copyright, i.e., the exclusive right to multiply copies of a book, belongs to natural or positive law. All agree that until the book has been published the complete ownership of it belongs to the author, and that anyone who deprives him of it against his will commits theft. After publication some authorities hold that as far as the law of nature goes anyone who buys a copy may make what use of it he pleases, and may even issue it again without the author's permission if he chooses to do so. He is merely making use of his own property. Others, however, affirm that by the law of nature an author may reserve to himself the right of re-issuing his book, while he publishes and sells it to buyers for all other purposes. This is the better opinion.¹

¹ *Manual of Moral Theology*, vol. i, p. 346.

2. If the civil law protects copyright, is it matter of conscience not to infringe it ?

Yes, for the case is one in which positive law determines what is at least suggested by the law of nature, and what is in entire agreement with its dictates.²

² The same work, p. 126.

3. What is the law of copyright in England and in the United States?

In England the law protects copyright for the author's life and for seven years more, or for forty-two years, if this period is longer than the former. In the United States the original term runs for twenty-eight years, but it may be renewed for a further period of fourteen years. A foreign author may obtain

copyright in the United States provided that the book is produced in the United States from type set up there or from plates manufactured there.

4. The case. The English bishop in the case certainly had grounds for complaining that his book had been issued in America without his permission. As is clear from the answers given above, it is not absolutely certain that the act was also against honesty and justice, for we must suppose that the bishop had not fulfilled the conditions for acquiring copyright in the United States.

Case 8. Prescription

Caius, an architect, had prepared the plans of a new building for a certain college of religious in England; since, however, on account of lack of money the religious could not build immediately, their superior asked Caius to seek his expenses. Caius wished the work to be entrusted to him for completion and therefore did not wish to seek immediately the expenses, which easily exceeded one hundred pounds sterling, although the superior had asked him more than once. Other superiors succeeded, and at length one of them, who knew that for at least fifteen years Caius had said nothing about his expenses and therefore thought that he had renounced the money, began to doubt whether, even if he now sought payment, he himself was bound to pay. Hence it is asked:

1. What is prescription, and what conditions are required for prescribing?
2. What are the Statutes of Limitation, and what are their effects?
3. What is to be said of the case?

SOLUTION

1. This question is answered in “Manual of Moral Theology,” vol. i, p. 376 and following.
2. What are the Statutes of Limitation and what is their effect ? Statutes of Limitation fix a certain time within which a right of action must be enforced. In English law the Real

Property Limitation Act, 1874, fixes twelve years as the period within which an action to recover real property must be brought, and the effect of the expiration of the statutory time is not only to bar the right of action, but to extinguish altogether the title of the person against whom the time limit has run. Other Limitation Acts differ from this in that they only bar the remedy; they do not extinguish the right. Thus by the Limitation Act of 1623, as amended by subsequent statutes, actions for debt grounded on any lending or contract without specialty must be brought within six years after the time at which payment became due. But although after the lapse of the statutory period no action may be brought, yet the debt is not extinguished. Sir F. Pollock says: “Now there is nothing in these statutes to extinguish an obligation once created. The party who neglects to enforce his right by action can not insist upon so enforcing it after a certain time. But the right itself is not gone. It is not correct even to say without qualification that there is no right to sue, for the protection given by the statutes is of no avail to a defendant unless he expressly claims it. . . . Although the creditor can not enforce payment by direct process of law, he is not the less entitled to use any other means of obtaining it which he might lawfully have used before.”¹

¹ *Principles of Contract*, p. 599. 4th ed.

3. The case. Caius, an architect, neglected to send in his bill for work done for some Religious, because he hoped to get the whole job if he waited. Fifteen years elapsed and nothing was said by either party about the debt. The Religious Superior began to doubt whether there would be any obligation to pay the bill even if the architect sent it in after the lapse of so long a time.

From what has been said already it is clear that the architect could not bring an action at law to recover payment of his money. In certain circumstances the debtor might even presume that the debt had been condoned and refuse to pay, even if afterward the bill were sent in. Apart from this, as the Statute of Limitation does not extinguish the debt, and as there is no prescription in such cases according to English law, the obligation in conscience to pay the debt still remains, if the architect chooses to demand payment. Otherwise he may be presumed to have abandoned his claim.

Case 9. Whose is the Increment?

Caius had discharged the office of secretary for a certain society. But now, having been free of the office for several years, one day, led by curiosity, he was turning the leaves of a book which he had used for writing letters for the society when he found in the book stamps to be affixed to letters, of the value of one pound sterling. Recently, however, the form of the stamps had been changed more than once by governmental authority, and hence the value of the stamps found had increased tenfold among their collectors. Caius therefore asked his confessor whether he was bound to restore one pound or ten to the society to which the stamps belonged. Hence it is asked:

1. How are the fruits of a thing divided, and to whom do they belong?
2. What is the title of finding, and is prescription of things found granted by our law?
3. What is to be said of the case?

SOLUTION

1. This question is answered above, p. 243.
2. See an answer to this question, p. 253.
3. The case. The stamps belonged to the company of which Caius had been secretary. However, by the unconscious action of Caius in keeping them for some years their value had increased tenfold. He is bound to restore to the company the value which belongs to it, viz., one pound. We may rest his title to keep what is over either on the ground that it is increment due to his own action, although unconscious, or on the ground of finding which may be applied at least to the surplus value of the stamps. As the stamps are a form of money, there is no obligation to restore them in their identity to the company any more than there would be an obligation to restore the identical coins lent, in the case of paying a debt. All that belongs to the company is the value which the stamps represented at the time when they were intended for use.

Restitution

Case 1. Defrauding a Railway Company

Titius, since he frequently used the railway in making journeys, bought a six-month ticket; after that period of time had elapsed, he made journeys in the same way for a month without renewing the ticket or otherwise paying the price of the journey. When he had disclosed these things in confession, the confessor asked what price was owed to the company; Titius answered him that the sum would be about two pounds sterling. Having heard these things, the confessor considered within himself whether Titius was bound under grave sin to restore two pounds sterling to the railway company. Hence it is asked:

1. What matter is required to constitute a grave sin against justice?
2. In England, on account of the lesser value of money, is a larger sum required for grave matter than among other nations of Europe?
3. Do small thefts coalesce, and how?
4. What is to be said of the case?

SOLUTION

1. What matter is required to constitute a grave sin against justice?

According to St. Thomas (II-II, question 59, article 4) the sin of injustice is mortal because it is against charity, which is the life of the soul. But sins against charity are only venial if the matter be light. Matter against charity will be grave if the act causes another serious sadness, or tends notably to disturb peace and harmony. Justice, it is true, looks rather at objective relations than at subjective dispositions, and so although charity will always serve as a measure of the gravity of sins against justice, yet in estimating the gravity of these sins we must take as our norm an ordinarily constituted person, not such as are specially sensitive. Loss of property in such a quantity as would cause serious trouble to an ordinarily constituted person will be a serious loss, and the theft of it will be a serious sin against justice. The theft of what would suffice to support the owner of the property and his family for a day would ordinarily be a serious loss to him, and would be grave matter. This rule serves for ordinary cases; for a measure of the gravity of theft from very rich persons or from wealthy companies we must have recourse to other considerations besides the foregoing. For theft does injury to the community and to the security of property, as well as to the individual owner. Even if the individual owner does not suffer loss which is serious for him, yet the harm which theft does to the community and to social security may be notable, and if it is notable, the theft will be mortally sinful. What sum is notable on this account will depend on circumstances of time and place. Although the precise sum can not be determined with mathematical exactness, yet, according to the common opinion, a sum of about one pound sterling is at present sufficient to constitute a mortal sin of theft, when it is taken even from the richest.

2. Is a larger sum required to constitute grave matter in England than in other countries on account of the less value of money there?

The affirmative has been maintained by some theologians. However, the conditions of modern commerce tend to equalize the value of money; or, in other words, the whole world is now one big market for money and the chief articles of commerce. If either money or goods are cheaper in one country than in another, trade is attracted thither, and trade soon tends to equalize prices. Hence there is no very notable difference now in the value of money in the different civilized countries of the world. Prices of different articles are, indeed, different in different places, and this fact makes trade profitable; but the general cost of the same standard of living is much the same all the world over.

3. Do small thefts coalesce, and how?

Small thefts certainly coalesce, as is clear from Proposition 38, condemned by Innocent XI. Small thefts coalesce, owing to the intention of the thief finally to steal a large sum, or owing to conspiracy among many, each of whom steals something ; also owing to the hoarding of small sums stolen at short intervals.¹

¹ *Manual of Moral Theology*, vol. i, p. 396.

4. The case. Titius traveled on the railway for a month after his season ticket had expired, without paying his fare. He thereby defrauded the railway company of two pounds. He took that value which belonged to somebody else, against that person's reasonable wish. He therefore committed theft, and as the matter is grave, he is bound under grave sin to make restitution of that sum to the company.

Case 2. A Malicious Intention

Philip, a Catholic, placed poison in his garden to kill harmful animals. Sometimes he had found a cat or even a dog killed by the poison in the garden, when the thought occurred to him: "Would that this valuable dog of my neighbor Caius were killed in this way, for Caius has often been troublesome to me, and not rarely have I found his dog entering my garden." Therefore, led by the hope of killing the dog of Caius, which is descended from the breed called Saint Bernard, he placed a larger quantity of poison, and the next morning found that unfortunate dog dead in a corner of the garden. After it was buried, his conscience pricked him concerning restitution to be made. Hence it is asked:

1. Can the intention make an external act unjust?
2. What is an occasional cause and an accidental cause of damage?
3. When is one who posits the cause of another's damage excused from making restitution, even if the damage was foreseen or desired?
4. What is to be said of the case?

SOLUTION

1. Can the intention make an action unjust which otherwise is not unjust? Some theologians, with Lugo, assert that it can, but the common opinion is against them. For the intention with which an action is done does not alter the nature of its influence on the effect produced, and whether an act is unjust or not, depends on this influence.¹

¹ St. Alphonsus, book iii, no. 584.

2. What is an occasional, and an accidental cause of damage?

An occasion is that which, being put, an effect follows from some other cause. Thus if A murder B, and C is taken up on suspicion, A is the occasion of C's arrest. An accidental cause is that from which the effect was not probable, though possible, as if A digs a trench where few people pass, but B, a blind man, passes that way, falls into the trench, and is killed; A is the accidental cause of B's death.

3. When is one who puts the cause of another's damage excused from making restitution, even though the damage was foreseen and desired? Besides theological fault, it is necessary that the action of him who is to be obliged to make restitution be the efficient cause of the damage, and that it be unjust. For unjust actions alone impose the obligation of making restitution, and nobody is bound to make restitution for damage which he did not cause.
4. The case. Philip poisoned his neighbor's dog out of spite. He certainly committed a grave sin against charity. But as he put the poison in his own garden, into which his neighbor's dog sometimes strayed, his action was not the efficient cause, but only the accidental cause of its death. He may therefore be excused from the obligation of making restitution, according to the better opinion.

Case 3. A Tipster's Obligations

Titius explained to his confessor that he had gained a large sum of money by pretending to be skilled in horse races and, by written letters, giving advice for five shillings to all who sought it and wished to indulge in betting concerning the horse which would be victorious in coming races. He added that, on a certain occasion, he had by chance predicted the truth, whence reputation and profit had increased for him, and that he now knew entirely nothing of who had consulted him and paid money to him. But the confessor, since it is not established whether by natural or positive law debtors from a delict are bound to make restitution to uncertain owners, thinking that he certainly was not bound by positive English law, excused him from making restitution. Hence it is asked:

1. What are the roots of restitution?
2. To whom must restitution be made? Does ecclesiastical law establish anything concerning this matter?
3. In what matter are ecclesiastical law and civil law respectively competent?
4. What is to be said of the case?

SOLUTION

1. What are the roots of restitution?

The roots of restitution are the causes which impose the obligation of making restitution, and they may be reduced to the possession of what belongs to another, and the doing of unjust damage to another.¹

¹ *Manual of Moral Theology*, vol. i, p. 399.

2. To whom must restitution be made? Does ecclesiastical law lay down anything on this head?

In general, restitution must be made to those who suffered the injury. If these are unknown, ecclesiastical law lays down that at any rate, in the case of usury and simony, restitution should be made to the poor or to pious causes. More probably this is a determination of the natural law by the Church.¹

¹ *Manual of Moral Theology*, vol. i, p. 424.

3. In what matter is ecclesiastical and civil law respectively competent ?

This question is answered by Leo XIII in his Constitution *Immortale Dei*, Nov. 1, 1885: "Whatever therefore in things human is of a sacred character, whatever belongs either of its own nature or by reason of the end to which it is referred to the salvation of souls, or to the worship of God, is subject to the power and judgment of the Church. Whatever is to be ranged under the civil and political order is rightly subject to the civil authority."

4. The case. On the supposition that Titius got the money by fraudulently holding himself out as an expert in horses that were likely to win races, he had no right to keep the money, and was bound to make restitution to charitable or religious purposes, as the real owners were unknown. However, in practice, tipsters are guided, if not by their own knowledge of the chances, at any rate by the course of betting published in the papers, and other probable indications of the chances of success. Moreover, those who consult them know that certain information can not be had from the nature of the case. They consult a tipster because they are not able to make up their own minds as to the placing of their bet. He helps them to make up their minds, and payment is made for that as much as for anything else. Titius should be told to seek a livelihood in some other way, but as far as the past is concerned it would seem, in general, that such as he may be excused from making restitution on the grounds that have just been indicated. So that the confessor's decision was not practically wrong, though he rested it on wrong grounds.

Case 4. Restitution in Another Species of Goods

Caius was assistant priest to Titius, another priest who was parish priest and who asked his counsel about his obligations in these circumstances. Six years ago, compelled by necessity, Titius borrowed one hundred pounds from Patrick, at that time indeed a most friendly man, but recently made a most hostile enemy. Patrick gravely and rather often calumniated Titius, so that among the faithful and fellow citizens his reputation suffered grave damage, which, as he sincerely estimates, would not be compensated by a sum of one hundred pounds. Therefore it is in his mind to retain for himself £100 as some compensation for his reputation unjustly injured, since he knows well that Patrick will invoke the civil law in vain in order to recover the debt. Hence it is asked:

1. What is restitution, and whence does the obligation of restoring arise?
2. Given the impossibility of restoring in goods of the same order, is there an obligation of restoring in goods of a different order?
3. What is the effect of our laws—the Statutes of Limitation?
4. What is to be said of the case?

SOLUTION

1. What is restitution and whence arises the obligation of making restitution ? Restitution is reparation for an injury that has been done to another. Such reparation is required by the very nature of the virtue of justice, which prescribes that each should have his own, and consequently that, when one has been deprived of what belongs to him, the same thing, or its equivalent, shall be restored to him.¹

¹ *Manual of Moral Theology*, vol. i, p. 398.

2. When it is impossible to make restitution in goods of the same species, is there an obligation to make it in goods of another species?

This is a disputed point among theologians, but according to St. Alphonsus (III, no. 627) the more common and more probable opinion denies any such obligation.

3. What is the effect of our Statutes of Limitation ?

This question is answered above, p. 261.

4. The case. If Titius is certain that he has suffered loss in money to the extent of £100 on account of the calumnies of Patrick, he may keep the £100 which he borrowed from him. If his reputation alone has suffered, he should not in practice constitute himself his own judge in his own case, as he would do if he kept the money as compensation for Patrick's calumnies. He has, indeed, a probable opinion in his favor, but he should not appropriate to himself what belongs to another on the strength of a merely probable opinion. The Statutes of Limitation

bar Patrick's remedy, it is true, but do not extinguish the debt. Titius then should pay back the £100, and if that does not bring about a reconciliation, he may threaten Patrick with an action for slander, unless he desists from his calumnies.

Case 5. A Confessor's Mistake

Titius borrowed one hundred pounds sterling from his relative Caius, who, since he knew that Titius was oppressed by straitened circumstances, did not seek the money owed for several years; but after seven years, when the affairs of Titius had changed for the better, he asked him to return the hundred pounds. Titius doubts whether, after so many years have elapsed, he is bound to pay the money, since the debt has been extinguished by what is called the Statute of Limitations; nevertheless, he approaches a confessor and asks whether he is bound or not. The latter says that it is honorable to pay the money, but that there is no strict obligation. Hence it is asked:

1. What are the Statutes of Limitation, and what are their effects?
2. To what is a confessor bound who has unduly exempted a penitent from the burden of restitution?
3. What is to be said of the case?

SOLUTION

1. This question is answered above, p. 261.
2. What are the obligations of a confessor who has wrongly excused a penitent from the duty of making restitution?

If the confessor excuses the penitent out of malice or gravely culpable ignorance, he is bound to correct his error, and if he does not do so, or if now the penitent is unwilling, or is not able to make restitution, the confessor will be bound to make it for him. If there was no grave fault in the confessor's advice, he will be bound to correct the mistake as far as he can, and if he can not do this, he will be excused from further obligation.

3. The case. Titius was wrong in thinking that the effect of the Statutes of Limitation for an action of debt is to extinguish the right after six years. Those who administer the law and lawyers are unanimous on the point, and agree that it only bars the remedy. But if the debt is not extinguished by the law, it still remains to be paid. The confessor, therefore, was wrong in his decision, and if he gave it from gravely culpable ignorance, he is bound to correct his mistake, and if Titius will not now make restitution, or can not now, though he could have done before, the confessor will be bound to make it for him, as was said above.

Case 6. Excused from Making Restitution

Titius, a Catholic who enters into contracts for the building of houses (building contractor), confesses that some years ago, through an error, he received from a certain man four hundred pounds more than was owed to him, concerning which matter he is now troubled in conscience. Caius the confessor asks whether he is able to restore them. Titius answers that he has nothing superfluous, that his receipts and expenses in each year are nearly equal, and that he could indeed make restitution absolutely, if it is necessary for salvation, provided that he remove two daughters from school and compel his adult son, who hitherto has not obtained employment suitable to his station, to leave home in order to support his life by labor of any kind. Caius wishes to know whether he ought to impose the obligation of making restitution in the circumstances stated. Hence it is asked:

1. Whence does the obligation of restitution arise?
2. What are the roots of restitution?
3. What causes excuse from restitution?
4. What is to be said of the case?

SOLUTION

1. This question is answered above, p. 273.
2. This is answered above, p. 270.
3. What excuses from making restitution?

The condonation of the debt by the creditor, physical or moral impossibility as long as they last, and in England absolute discharge after bankruptcy.¹

¹ *Manual of Moral Theology*, vol. i, p. 437.

4. The case. Titius, a contractor, was paid £400 more than was due to him. He kept the money for some years, and then asked his confessor what he was bound to do. He told his confessor that he could not now restore the money without recalling two daughters from school, and sending an adult son, who was living with him, out of the house, to make a living as best he could. Under these circumstances, Titius is not bound to restore the £400 at once. The daughters have a right to receive the education which is usual in their condition of life, and the son should not be turned out on the streets. If Titius tried, he might be able to lay by £10 a year, and thus pay off by degrees a large part of the debt. If he can do anything like this, he will be bound to do it.

Case 7. Restitution for Adultery

Titia, a Protestant, asked Paul the priest to receive her into the Catholic Church. Paul, however, found that she was very well instructed, and that the sole difficulty she felt was whether she was bound to disclose to her husband the truth concerning the paternity of her only daughter. For she knew with certainty that the daughter was not her husband's, although he believed her to be his, but was born of adultery. It is very probable that, on account of her age, Titia will have no other offspring, in which case the only daughter will succeed to the property of her mother and to at least a large part of her husband's property. Hence it is asked:

1. By what right do children succeed to the property of their parents?
2. To whom, by whom, and what kind of restitution is to be made on account of adultery?
3. What is to be said of the case?

SOLUTION

1. By what right do children succeed to the property of their parents?

According to the common opinion, children have a natural right to succeed to the property of their parents, though this right may be determined and modified by positive law, or by the will of the parents, and even be altogether taken away for good reason.¹

¹ Lehmkuhl, vol. i, no. 1141.

2. To whom, by whom, and what restitution is due for adultery?

Adulterers are bound jointly and severally to make restitution for all the damage which follows to others from the adultery on account of the illegitimate child being supposed to be legitimate. This, however, supposes that it is known for certain that a child is illegitimate, and this can seldom happen if the husband is living maritally with his wife. If he is not living with her, both he and others will know that the child is illegitimate, and so there will be no damage done which has to be repaired; for the merely personal injury which adultery inflicts on the adulterer's consort is irreparable.

3. The case. Titia is not bound to make known her sin to her husband, and she should not do it. More harm than good would come of it. The case says that she is certain that her child is illegitimate, though her husband thinks it is his. On this hypothesis she should make up, out of her own property, the damage which her husband's property incurs on account of his treating the child as his, unless he does this out of affection for the child, and not precisely because it is his. In practice, the illegitimacy will either be doubtful, and then Titia will be strictly bound to nothing, or her husband will know it, and then whatever he spends on the child will be given to it knowingly, and no restitution will be due to him, or to others, for this.¹

¹ St. Alphonsus, book iii, no. 651.

Case 8. Possession in Doubtful Faith

A certain man of a sufficiently disreputable appearance knocked at the door of a certain presbytery and offered Titius the priest a hare together with a large salmon for a few shillings. Titius gravely suspected that the things were stolen; nevertheless, since the next day was Holy Saturday and the following Sunday was Easter Sunday, he thought that the opportunity was not to be despised and bought them. After a few days he found with certainty that the things had been stolen, and consequently he is troubled by a scruple concerning the purchase made and whether any obligation rests upon him. Hence it is asked:

1. What are the obligations of a possessor in doubtful faith?
2. What would the obligations of Titius be if he had bought the said things in open market?
3. What is to be said of the case?

SOLUTION

1. What are the obligations of a possessor in doubtful faith?

One who deprives another of the possession of something without being certain that it is his must make restitution, for he injured the possessor's rights. If he obtained possession in good faith, and afterwards began to doubt about his right of possession, he must make inquiries as to the true owner, and abide by the result. If, after inquiry, the doubt remains, he may retain possession. If he obtained possession in doubtful faith, and after inquiry the doubt remains, he must make restitution of part, according to the quality of the doubt, according to the common opinion. D'Annibale and Bucceroni think that even in this case possession of the whole may be retained with the intention of making restitution to the true owner if and when he appears.

2. What would be the obligations of Titius if he had bought the objects mentioned in the case in open market?

If he had bought them in open market in good faith, he would have acquired ownership of the goods, as the law in that case gives a valid title to the property thus bought.

3. The case. Titius did wrong in buying the hare and salmon while in doubt whether the seller had the right to sell, and in afterward eating them in the same state of doubt. He knowingly exposed himself to the danger of consuming what belonged to some one else and sinned against justice. When afterward he found out for certain that they were stolen, he became obliged to make restitution to the true owner, for having unwarrantably consumed his property. If he had bought and consumed the goods in good faith, he would have been bound to nothing.

Case 9. Preference in Bankruptcy

Titius, burdened with an enormous debt, spoke of his most wretched condition with Caius, his friend and creditor, and received from him the advice that he should surrender his goods as soon as possible, lest the condition of the creditors become worse. At the same time, however, Caius asked him to repay to him before the surrender what he had borrowed from him. Titius did this and a little afterward became bankrupt. Moreover, by this surrender the remaining creditors received scarcely a third part of what was theirs. Conscious of this, and having suffered anxieties of conscience on that account, Caius approached a theologian who was his friend in order to lay them aside, and disclosed to him that he had in fact received from Titius what was his in full, to the prejudice of the other creditors, but with these special circumstances: namely, that the other creditors had lent this man money at interest, whereas he himself had lent it gratuitously out of charity; that they were very rich, whereas he himself was poor in comparison with them; and, besides, that he was the first who had sought restitution. Hence it is asked:

1. In what order is restitution to be made?
2. Does a surrender of goods excuse from complete restitution, and under what conditions?
3. What is to be said of the case?

SOLUTION

1. In what order must restitution be made?

If the debtor is solvent, the order of paying his debts is immaterial. If he is not solvent, he will be adjudged a bankrupt, and his property will be distributed ratably among his creditors, with the exception of some, to whom the law gives preference. English law gives such a preference to rates and taxes, and to certain salaries and wages.¹

¹ *Manual of Moral Theology*, vol. i, p. 429.

2. Does bankruptcy excuse from full payment of one's debts, and on what conditions?

The answer to this question will depend upon the law of the country. According to English law, a bankrupt who has conformed in all things to the law, and has paid at least ten shillings in the pound of his debts, may be granted an absolute discharge, the effect of which is to make him a clear man again. Large discretion is given to the judge to defer, or to grant on condition, or to grant absolutely, a bankrupt's discharge.²

² Stephen, *Commentaries on the Laws of England*, vol. ii, p. 260. *Manual of Moral Theology*, vol. i, p. 451.

3. The case. We have to do with Caius primarily. The payment of his debt in full, when it was morally certain that Titius was insolvent, would in all probability be regarded in English law as a fraudulent preference, and if it came to the knowledge of the official receiver or trustee in bankruptcy, the money would have to be refunded. However, no moral fault would seem to

attach to Caius. His debt was due, as we suppose; he had a right to ask for payment, and having got it, he may keep it, unless compelled by law to refund it. Titius was not justified in paying Caius in full under the circumstances, according to strict law. He paid not to avoid pressure, but in order that a friend might not suffer from his bankruptcy. In the eyes of the law, he would, in all probability, be held guilty of fraudulent preference, and this would prevent him getting his discharge.³

³ *Manual of Moral Theology*, vol. i, p. 434.

Case 10. Fraudulent Preference

Julius lent his friend Caius, a merchant, one thousand pounds sterling; but when the business did not prosper, Caius was compelled to surrender his goods. A few days before he directed a petition to the court, Caius, on account of their old friendship, as he said, handed the thousand pounds in full to the grateful Julius. Afterward, however, his goods, distributed among the other creditors, scarcely equaled half of the sum owed to each. Hence Julius, a very good Catholic, moved by scruples, approached a confessor, who, when he had heard everything, compelled Julius, as a cooperator with Caius in the unjust damaging of the other creditors, to make restitution to them. Hence it is asked:

1. What are the roots of restitution?
2. When a debtor is not solvent, to what is he bound, whether by natural law or by municipal law?
3. Can a confessor, relying upon a probable or even a more probable opinion, impose the obligation of restitution upon a penitent?
4. What is to be said of the case?

SOLUTION

1. This question is answered above, p. 270.
2. When a debtor is not solvent, what is he bound to do by natural or municipal law?

As soon as a debtor recognizes that he can not pay his debts in full, and that there is no reasonable probability of his being able to do so, he is bound to take steps to enter into a composition with his creditors, or to have himself declared bankrupt. If he goes on to contract new debts after recognizing that he is hopelessly insolvent, he does an injury to his creditors and renders himself liable to have his discharge suspended, if not altogether refused.

3. Can a confessor impose an obligation on a penitent of making restitution when there is a probable, or more probable opinion, in favor of the obligation?

No; he can not. An obligation must not be imposed unless it is morally certain that it exists.¹

¹ St. Alphonsus, book i, nos. 26, 87; book vi, no. 604.

4. The case. Caius by a fraudulent preference just before bankruptcy paid a debt of £1000 in full owed to his friend Julius. The other creditors received hardly half of what was owing to them. Julius mentioned this in confession, and his confessor compelled him to restore on the ground of co-operation in the unjust action of Caius.

The confessor did wrong, for Julius had a right to the money, and he did no injustice to the other creditors by taking it when it was offered by Caius. Caius indeed had obligations toward the other creditors on account of his contract with them, and if he could not pay all in full, he was bound to

pay all ratably. They had all a certain indefinite claim against his estate. Caius did wrong in preferring Julius, but when it was offered, Julius could lawfully take the £1000; it did not belong to anybody else; it became his on acceptance as payment for his debt. His co-operation with Caius was material, not formal, and lawful as it is lawful to accept a usurious loan from a usurer. There is at any rate good ground, both intrinsic and extrinsic, for this view.²

² Lehmkuhl, vol. i, no. 1027.

Case 11. Fraudulent Foresight

Titius, a Catholic merchant, when he perceived that within a short time he would necessarily have to surrender his goods, sent two thousand pounds to the rector of the college where his two sons were being educated, which sum would suffice to pay the expenses of the whole future education of his sons. The matter happened as he had foreseen; but, after paying fifteen shillings for each pound owed, he received a legal discharge (absolute discharge), without the creditors knowing anything about those two thousand pounds. While making his Easter confession, Titius disclosed all these things to his confessor. Hence it is asked:

1. What is a fraudulent surrender of goods?
2. After one who has surrendered his goods has received a discharge, is he still bound to pay his debts in full?
3. What is to be said of the obligations and manner of acting of Titius?

SOLUTION

1. What is fraudulent bankruptcy?

Bankruptcy may be fraudulent in many ways. A few instances may be given. "1. If the bankrupt does not, to the best of his knowledge and belief, discover to his trustee all his property, and the mode in which he has disposed of any part thereof; except in the ordinary way of his trade, if any, or in the ordinary expenses of his family. 2. If he does not deliver up all such part of his property as is in his custody or control, and which he is required by law to deliver up. 3. If, after the presentation of a petition, or within four months before, he conceals any part of his property to the value of £10 or upwards, or conceals any debt due to or from him. 4. If within the same period he removes any part of his property to the value of £10 or upwards."¹

¹ Stephen, *Commentaries*, vol. ii, p. 244.

2. This question was answered above, p. 284.
3. What about the obligations and the way of acting of Titius? Titius is a fraudulent bankrupt, and his discharge will not avail him in conscience. The greater part at least of the £2000 which he sent to the rector of the college belonged to his creditors, and the effect of his action is that his sons are being educated at the expense of his creditors. Titius may allow the rector to keep practically all that is due to the college for the education of the two boys up to the present, but either the rest of the £2000 or a sum equal to it he should distribute among his creditors.

Contracts

Case 1. Unlawful Contracts

A certain priest proposed the following cases to be solved:

I. Adalbert secretly introduced an enormous quantity of merchandise without paying the customs duties owed upon it, with the help of a certain Thomas, to whom he had already given fifty pounds for his labor and had promised to add fifty when the work was completed. Nevertheless, he did not stand by his promises, having heard that such a contract, inasmuch as it concerned unlawful matter, had been invalid from the beginning.

II. The same man had seduced a girl, seeking her consent to sin as a condition for contracting marriage afterward. But when he again did not stand by his promises, he was summoned by her to court and was punished with a fine of £1000 for breach of promise, which, lest he be compelled to pay it, he went away into another country. Hence it is asked:

1. What is the obligation of municipal law in England?
2. When our municipal law invalidates a contract, is the contract invalid in conscience?
3. Does a base contract bind, and in what manner?
4. Let the proposed cases be resolved.

SOLUTION

1. What is the obligation of municipal law in England? Where English law applies or determines natural law, it binds the conscience under pain of sin. A merely positive law in England is probably penal and binds the conscience only to submit to the penalty if it is imposed by competent authority.¹

¹ *Manual of Moral Theology*, vol. i, p. 125.

2. When our municipal law voids a contract, is the contract void in conscience?

Not at once and immediately; if it is valid by the law of nature, it remains valid unless some one moves to take advantage of the voiding law and set the contract aside.²

² The same work, pp. 128, 478.

3. Does an immoral contract bind, and in what manner?

A contract to do something which is morally wrong is null and void in itself before the bad action agreed upon is done, as there can not be an obligation to do wrong. After the bad action has been done by one party, many theologians hold that the other party to the contract is bound to fulfil his promise, not by reason of the original contract, but because of a new contract, *facio ut des*, concluded in the very doing of the action. Others deny this, and hold that an immoral contract is and remains invalid.³

3 The same work, p. 488.

4. The cases. The contract which Albert made with Thomas was against positive law, but not necessarily immoral. It was therefore a valid contract and obligatory in conscience. Albert is therefore bound to pay the second fifty pounds to Thomas.

This same Albert seduced a woman by making her a promise of marriage. As he did not fulfil his promise the woman brought an action against him in court and obtained £1000 damages. Albert fled the country to avoid payment. Apart from the question whether the promise of marriage was valid or not, Albert did the woman an injury, for which he is bound to make compensation as far as possible. The court condemns him to pay £1000 damages for the injury, and he is bound in consequence to submit and to pay the sum. His flying from the country will not excuse him.

Case 2. Dishonest Servants

Titius, who was a servant to a certain noble family, confessed that he had discovered a fellow servant who had committed many thefts of the goods of their common master, and that he had not disclosed them to the master; indeed, that he had received a sum of money from the thief in order to preserve deep silence about the thefts. The confessor, however, is uncertain whether Titius sinned or not, and whether he is bound to restitution. Hence:

1. Are servants bound to prevent thefts of their master's goods?
2. What is a base contract, and is it lawful to retain a benefit obtained from it?
3. To what extent is there an obligation of restitution by reason of participation in the thefts of another?
4. What is to be said of the case?

SOLUTION

1. Are servants bound to prevent thefts of their master's property?

Yes; they are so bound at least in charity, and they are bound in justice also if the goods of their master that are stolen were specially entrusted to their charge and keeping.¹

¹ *Manual of Moral Theology*, vol. i, p. 290.

2. What is an immoral contract, and is it allowable to retain the consideration which has been paid on account of it?

See this question answered above, p. 290.

3. How far does partaking in another's theft impose an obligation to make restitution?

A partner in another's theft is bound to restore any stolen goods that he received, and if he took part in the acts of theft, or by his conduct encouraged the thief in his thieving, he will also be bound jointly and severally with the thief to make good all the damage done.

4. The case. Titius was bound at least in charity to inform his master about the thefts of his fellow servant at least if this was necessary to prevent future thefts. He was bound also in justice if the care of his master's property was specially entrusted to him, and he will be bound to make restitution for failing in this duty of justice imposed on him by the nature of his office. Titius, moreover, took money from the thief and promised not to inform on him. If we suppose that Titius had no special charge of the stolen property, and the only question is of his obligation concerning past thefts of his fellow servant, the contract made with the thief was indeed immoral and made him guilty of an indictable offence called misprision of felony. However, it is not certain that he is bound to restore the money which he received as consideration for his silence. If according to what was said above, informing his master is

necessary to prevent future thefts, or his duty imposes on him the obligation in justice of informing about the thief, he should be told to do his duty and return the money which he received from the thief to his master as partial restitution for the thefts.

Case 3. A Contract with a Modus

Certain Catholics in a certain town wished a certain religious Order to have a church in their town; indeed, after a large sum of money had been collected, they bought land on which a house and church might be built and handed it over to that Order by a gift between living persons. The diocesan bishop, however, although at first he neither gave nor denied consent, after the land had been handed over and the matter had been discussed with the canons, absolutely refused to give consent, so that there was no hope that the Order would come to the town. When these things became known, the donors expected that the land would be returned to them; the price of it after it had been sold, however, was retained by the Order. Hence it is asked:

1. What is a mode added to a contract, and how is it distinguished from a condition?
2. What is a gift between living persons, and can it be revoked?
3. In whom is the ownership of ecclesiastical goods, and what is to be said of their alienation?
4. What is to be said of the case?

SOLUTION

1. What is a modus added to a contract, and how does it differ from a condition?

A modus is an obligation in justice to do something added to a contract, but the validity of the contract does not depend on the fulfilment of the modus. A condition is either precedent or subsequent. The former is an agreement that the contract shall depend on the happening of a future event. If the happening of the future event will, according to the agreement of the parties, discharge the contract, we have a condition subsequent.

2. What is a donatio inter vivos, and can it be revoked?

A donatio inter vivos is distinguished from a gift mortis causa and is irrevocable by English law.

3. Who has the ownership of ecclesiastical property and can it be alienated?

According to the common opinion the ownership of ecclesiastical property is in the community to whom it was given by the donors, whether that community be the province, the diocese, the parish, a Religious order, or some other religious corporation. It can not be alienated without the permission of the Holy See under pain of excommunication.

4. The case. Some Catholics wanted a certain Religious order to come and settle in their town. They collected a sum of money, bought a site, and presented it to the order. The bishop, however, after consulting his canons, absolutely refused his permission, so that there was no hope of the order being able to come to the town. It therefore sold the site, and kept the proceeds, although those who had presented the site expected that it would be returned to them after the bishop had refused his consent.

From the answers given to the questions above, it is clear that the order acted perfectly rightly, and indeed could not without the permission of the Holy See return the site to the donors. It was given absolutely, not conditionally, with the obligation to use it if possible for a certain purpose. Through no fault of theirs that purpose became impossible, but the site remained theirs and ecclesiastical property.

Case 4. A Promise

When Caius, a missionary priest, had recently been transferred to another parish, his former parishioners wished to make a gift as a testimony of their grateful spirit. Titius, one of them, attended a meeting of the parishioners at which this was determined, and, moved after hearing the praises of Caius, promised that he would give five pounds sterling. On the next day, however, because the merits of Caius did not seem so great and the sum of money promised appeared large, Titius changed his mind and determined to give nothing. But because his conscience was not at rest, he disclosed the whole matter in his next confession to Julius, who had succeeded Caius. When questioned by Julius, Titius asserted that he had had no intention of binding himself in justice; hence the confessor began to doubt whether he was constrained under sin by any strict obligation—indeed, not under grave sin because it was not from justice, nor under light sin because, as he said, a light obligation has no proportion with grave matter. Before he gives Titius an answer, Julius asks:

1. What is a promise, and what kind of obligation does it introduce?
2. How does the obligation of a promise cease?
3. Does Julius rightly apply his principles?
4. What is to be said of the case?

SOLUTION

1. What is a promise and what sort of obligation does it impose? A promise is a unilateral and gratuitous contract by which one person binds himself to do something for another. The quality of the obligation which a simple promise imposes depends on the intention of the promisor. If he intends to give the promisee a strict right to what he promised, the obligation to fulfil the promise is one of justice; otherwise it will be one of fidelity.¹

¹ *Manual of Moral Theology*, vol. i, p. 496.

2. How does the obligation of a promise cease?

In general a simple promise will cease to bind if some event takes place or becomes known subsequently which would have prevented the promisor from making the promise if it had been known beforehand. A fortiori it will cease to bind if the thing promised become impossible, wrong, or useless, or if anything happen which would suffice to discharge even a bilateral and onerous contract.

3. Does Julius apply his principles correctly?

No; he does not. The doctrine which he applies to this case has reference to the question whether there is an obligation to make restitution when grave harm has been caused by slight negligence. In that case many theologians hold that there is no obligation to make restitution because the unjust act was not perfectly voluntary, and because restitution in such a case has the nature of a penalty, and a

grave penalty should not be inflicted for a slight fault. In our case the question concerns the obligation of fidelity which binds under venial sin in great as in small matters.²

2 St. Alphonsus, book iii, no. 552; Lugo, *De Justitia*, disputation viii, no. 58.

4. The case. Titius has no solid reason for not keeping to his promise, which was made seriously after deliberation about the matter, as we must suppose. He will therefore be bound at least under pain of venial sin to give the five pounds which he promised.³

3 Lugo, *De Justitia*, disputation xxiii, no. 89.

Case 5. A Legacy to the Parish Schools

Titia consulted a priest concerning her obligations in these circumstances. Recently her husband died, who by his will left her two hundred pounds annually, one hundred to the parish priest for the parish schools, but a much larger part of his property to his brother for the use of a most beloved nephew. Titia, however, since she knew that the witnesses to the will had signed it separately and in different places, contested its validity and won the case. She then obtained letters of administration and, being about to distribute the goods of her husband, wishes to know whether in conscience she is bound to pay the hundred pounds to the parish priest. Hence:

1. What formalities are required by English law in making a will?
2. Does a defect of those formalities render a will invalid in conscience?
3. What is required for the validity of a will for pious causes?
4. What is to be said of the case?

SOLUTION

1. What formalities are required by English law in making a will?

Those formalities are laid down in the Wills Act¹: “No will shall be valid unless it shall be in writing and... signed at the foot or end thereof by the testator or by some other person in his presence and by his direction, and such signature shall be made, or acknowledged, by the testator in the presence of two or more witnesses, present at the same time, and such witnesses shall attest and shall subscribe the will in the presence of the testator, but no form of attestation shall be necessary.”

¹ 1 Victoria, chapter 26, section 9.

2. Does the absence of those formalities make a will invalid in conscience?

Probably at least an informal will is not at once invalid in conscience. It may be taken as a declaration of the last will of the testator and as such acted upon. But the law may be invoked by any one who is interested to have the informal will set aside, and if this is effectively done it must be held invalid in conscience as it is in law.¹

¹ *Manual of Moral Theology*, vol. i, p. 502.

3. What is required for the validity of a will in favor of pious causes?

Such wills are subject to canon law, which requires nothing more for their validity than certain proof of the intention of the testator, and the verbal testimony of two witnesses is sufficient for the purpose.²

² The same work, p. 506.

4. The case. The will of the husband of Titia was invalid by English law, as the witnesses did not sign in each other's presence. However, the legacy to the schools is governed by ecclesiastical law, and as there is no doubt about the intention of the testator, Titia is in conscience bound to pay the legacy. This solution has been upheld by many decrees and answers of the Roman Congregations. Thus the Sacred Congregation for the Propagation of the Faith gave the following answer to Cardinal Logue, April 30, 1895: "Now indeed it is certain . . . that the legacy endures, since the civil law cannot by its authority determine those things which pertain to pious causes; and consequently the legacy binds the heirs according to the tenor and mode of the legacy itself."¹

¹ *Irish Ecclesiastical Record*, vol. xv, p. 259.

A case very like the one proposed was submitted to the Sacred Penitentiary and solved by it, Jan. 10, 1901: "The Sacred Penitentiary, after maturely weighing the matters set forth, responds: The practice of this Sacred Tribunal in similar cases is that pious legacies generally be regarded as valid and obligatory in the tribunal of conscience; the heirs, however, are readily admitted to a composition with the Church or the pious cause to which the legacy was made."²

² *Acta S. S.*, xxxiv, p. 384.

Case 6. A Lost Will

Caius had made several wills before his death, as was well known among his relatives. When he died, Titius succeeded to his property, both movable and immovable, by virtue of the latest will that was found, although it was commonly thought that Caius had afterward made another; because it was not found after his death, however, the relatives thought that it had been destroyed. Titius had possessed the inheritance for several years when, by chance, while reading in the library, it happened that he found in a certain book the truly last will of Caius, which was thought to have been destroyed. By this last will all the property of Caius had been left to Paul, a cousin of Titius, and among the burdens with which the immovable goods were charged there was one of paying a debt of one hundred pounds to Sempronius, which had never been paid because Sempronius had not been able to prove the debt after the death of Caius. Titius preserves deep silence toward others concerning the will that was found, but asks a confessor whether he is bound to hand over the inheritance to Paul or to pay the debt to Sempronius. Hence it is asked:

1. What is an executor of a will, and what are his duties?
2. What is to be said of the case?

SOLUTION

1. What is an executor of a will, and what is his duty?

A will usually designates a person to whom the testator commits the execution of his last will and testament. This person is called the executor of the will. If no executor has been appointed in the will, his place is taken by an administrator appointed by the Court. After burying the deceased the executor's duty is to prove the will in the Probate Division of the High Court of Justice. On proving the will and fulfilling the duties laid on him by law the executor receives a copy of the will of which he is the executor, and this constitutes his title to act. It confers on him the right to administer the testator's property in accordance with the terms of the will. The executor must collect the effects of the deceased, pay his debts, and then he must pay the legacies if there were any in the will.

2. The case. Titius succeeded to the estate of Caius according to the terms of the last will which was found after Caius' death. Some years elapsed before Titius discovered another and later will of Caius in a book in the library. By this really last will all the property of Caius was left to Paul, a cousin of Titius, with the exception of £100 which was a debt due to Sempronius, who had claimed the money after Caius' death, but as he had not been able to prove his debt it had never been paid. The question is: Whether Titius is bound to hand over the property to Paul and to pay the £100 to Sempronius. The answer is: No. The title of Titius is derived from the will which was proved after the death of Caius; according to that will the property of Caius was duly administered according to law, and the transaction is closed, nor can it be re-opened because of the finding of a later will after the lapse of several years.

Case 7. Sale

Caius wished to sell his house, which was rather old; first, however, because, as he said, newly built houses are daily sold at a high price as though old, he concealed the cracks of the walls inside with new paper and, with the aid of paint, made almost everything outside appear as though new. Afterward he placed in a newspaper a notice concerning a very desirable house for sale, and within a short space of time a certain Julius willingly paid two thousand pounds for the house. After some weeks, however, Julius heard from the account of others what Caius had done, and although the house served all uses well, nevertheless, since he did not wish to retain such a house, he sold it and obtained a price of no more than one thousand pounds. When Caius, a Catholic, heard these things, the scruples that previously had not been entirely lulled were greatly increased, and consequently in his next confession he consults the confessor concerning the whole transaction. Hence it is asked:

1. What is the contract of buying and selling?
2. What is a just price, and what is the value of things?
3. How does error concerning the quality of a thing affect a contract of buying and selling, and especially the price?
4. What is to be said of the case?

SOLUTION

1. What is the contract of sale? Sale is a contract by which the seller transfers the owner-ship of a certain commodity to the buyer in consideration of a fixed price.
2. What is the just price, and what is the value of things?

The just price of a commodity is the money equivalent of the value of that commodity. Value in general is the worth of a thing, and it is of various kinds. We value an old friend, we esteem his worth; this may be called esteem-value. We also value a pocket-knife for the use it has; this is called use-value. If we want to sell the knife we think of its exchange-value — what other people are prepared to give for it. This exchange-value will depend upon the social estimate of the worth of the knife in the place and at the time in question. Remotely it will depend on what it costs to produce such knives, on supply and demand, on the manner of sale, etc..¹

¹ *Manual of Moral Theology*, vol. i, p. 523.

3. How does mistake about the quality of a commodity affect the contract of sale and especially the price?

Mistake about a quality of a commodity which was not the motive of the contract does not make the contract invalid nor rescindable, but the price should of course be morally equivalent to the value. Mistake about a quality which was the motive of the contract does not make the contract invalid, but it may be rescinded by the buyer if he discovers that he was deceived by the seller.

4. The case. Caius, by means of paper and paint, concealed the defects of his house and sold it for twice its value. He thereby committed a sin against justice by getting more for his house than it was worth, and he is bound to make restitution for the injury to Julius, the buyer of the house. Julius might have rescinded the contract and brought an action for deceit against Caius to recover damages for any loss that he sustained by the transaction.

Case 8. A Conscience-stricken Merchant

Titius, a merchant, during the time of the spiritual exercises discloses the following things to his confessor: (a) that, in order to transact many kinds of business, he had made very many journeys by railway without asking for a ticket; or, when he had asked for a third-class ticket, he made the journey in first class; (b) that he had sold things at a price far exceeding their value, because, as he says, other merchants did the same; (c) that in transacting business he made a great profit both by exaggerating and by telling slight lies. Hence it is asked:

1. What are the roots of restitution?
2. What is the rule for determining a just price?
3. What is to be said of the case?

SOLUTION

1. See the answer to this question above, p. 270.
2. The answer to this question is given above, p. 304.
3. The case. Titius, a merchant, confessed that he had very often in the course of business traveled on the railway without paying his fare. The convenience offered by the railway has its money value, and that value belongs to the owners of the railway. Anyone who uses that convenience without paying for it and against the will of the owners takes what does not belong to him and is guilty of theft. Titius must therefore make restitution to the company for what he has stolen from it. The same doctrine per se must be applied to his traveling first class with a thirdclass ticket, except that Titius may be excused from making restitution if and when he did this because there was no accommodation in the third class, for in such circumstances railway officials frequently put passengers in a higher class than that to which their ticket entitles them.

Titius also confessed that he had sold things for prices far above their value because others did the same. If the prices obtained were far above the highest just price, Titius sinned against justice and must make restitution. Nor does the practice of others justify him in doing what is unjust. If he can not make restitution to those whom he has injured because of their being unknown to him, Titius may make it by selling more cheaply to future buyers.

Titius also exaggerated the value of his wares and told fibs to catch a bargain. He did wrong to tell fibs, and if by doing so he got more than a just price for his goods, he must make restitution for this also. If he did not get more than the highest just price, he did not sin against justice, and he is not bound to make restitution.

Case 9. A Purchase of Modern Antiquities

Caius, a wealthy Catholic, when he was building a new house for himself, bought several ornaments (old china, miniatures, curios) for six hundred pounds sterling. He immediately paid the seller two hundred pounds, being about to pay afterward what remained. In the meantime, however, he heard from a certain expert that several of the said ornaments were modern and counterfeit, and that all of them were not worth more than one hundred and fifty pounds. He therefore determined not to pay the remaining sum to the seller, who, however, protested strenuously, saying that the buyer had inspected the things with his own eyes and had freely agreed upon the price. Caius wishes to know whether he can safely stand in conscience by his determination not to pay. Hence it is asked:

1. What is the contract of buying and selling?
2. What is a just price?
3. How is that maxim of our law—Caveat emptor—to be interpreted, especially with respect to the forum internum?
4. What is to be said of the case?

SOLUTION

1. This question was answered above, p. 303.
2. See the answer to this question above, p. 304.
3. How is the legal axiom Caveat emptor to be interpreted especially for the forum of conscience?

In English law the axiom Caveat emptor means that where an article is offered for sale and is open for inspection to the buyer, the buyer is not permitted to complain after the bargain has been struck that the defects, if any existed, were not pointed out to him. He had the opportunity of examining the article, and he should have found out its defects for himself. In the forum of conscience also the axiom may be applied to accidental and manifest defects which ordinary inspection should have revealed. It can not be applied to substantial defects which make the article useless for the known purpose of the buyer, nor to the absence of qualities which were the motive of the contract.

4. The case. Caius paid £200 down for some old china, miniatures, and curios for his new house, and contracted to pay £400 more at a future date. In the meanwhile he learned from an expert that many of the articles were not genuine but fictitious, and not worth more than £150. He therefore refused to pay the outstanding £400, though the seller vigorously protested on the ground that the buyer had examined the articles and freely contracted to pay the sum agreed upon. Caius wants to know if he is safe in conscience in refusing to pay more than he has done.

Yes; he is. Many of the articles are not what they were represented to be, and for what he bought them, so that he would have a right to rescind the contract and claim the damages. The price that he

has already paid is a very good one for the whole lot, and the seller should be satisfied with it.

Case 10. A Dishonest Broker

Titius, a Catholic, became an agent for buying and selling shares in the public market (stock-exchange broker). When business did not succeed as he had hoped, he tried in various ways to increase his fortune. Having received an order to buy specified shares at the current price, since the price varied during the day, he reported the highest price to the client and retained for himself the difference between this and the true price at which he had bought the shares. When the price of certain shares had fallen, he bought them in a large quantity in his own name and afterward, when the price had risen, frequently sold them to clients at a great profit. In order that this business might succeed more surely, he placed articles in newspapers in which he praised more than was right the security and value of those shares in order to attract buyers. By these devices the affairs of Titius were in a better state; but, driven by scruples of conscience, he came to confession, and, since without doubt he had inflicted great losses upon many persons known and unknown, disclosed his manner of acting to the confessor. Hence it is asked:

1. What are the obligations of an agent?
2. To whom and by what law is restitution to be made when the creditor is uncertain?
3. What is to be said of the case?

SOLUTION

1. What are an agent's obligations?

“In default of express or implied agreements to the contrary, the duties of an agent implied by law are: to perform the contract of agency; to observe the limits of his authority and the instructions given him by the principal, as also the customs and usages of the business in which he is employed; in all things left to his discretion to act with the most perfect good faith in the interest and for the benefit of his principal; to exercise due skill, care, and diligence, according to the nature of the business entrusted to him and the terms of the agency; to keep the money and property of his principal separate from his own; to pay over to the principal all moneys received to his use, and to account to him for all secret profits and commissions. No agent is allowed to enter into any transactions in which he has a personal interest at variance with his duty to his principal or from which he obtains any personal benefit or profit except with the consent of the principal.”¹

¹ *Manual of Moral Theology*, vol. i, p. 545.

2. This question is answered above, p. 273.²

² Compare the same work, p. 424.

3. The case. Titius, a stock-broker, on getting an order to buy a certain stock at the current rate, debited the highest price that ruled on the day in question to his client and pocketed the difference. In doing this he clearly committed an act of injustice, since he was bound to act for his principal, not for himself. He must restore his ill-gotten gains.

In buying stock on his own account when the price sank and selling afterward to his clients at a profit when the price rose, he acted within his rights, provided that he always sold at the current price. But when he unduly puffed such stock in the press in order to attract buyers and raise its price, and thereby caused loss to many, both known and unknown, he acted unjustly, and for this he is bound to make restitution. For to hold oneself out as an expert and then give damaging advice to clients for one's own benefit is fraudulent and unjust. If Titius can not succeed on the stock exchange by honest means, he should try some other occupation.

Case 11. A Secret Commission

Titius, the captain of a ship, put into a certain port in England to obtain coal for the use of the ship. As soon as he entered the port, behold, a letter was sent to him containing ten pounds in banknotes from a certain coal merchant, who asked him to be willing to favor him, since he affirmed that he had the best coal and that it was to be sold at no greater than the usual price. Although Titius knew well that the money had not been given entirely gratuitously, indeed, that without doubt the price of the coal would thereby be increased in some way, nevertheless, because almost everyone acted thus, he accepted the money and signified that he would buy the coal from the merchant. But since he was a Catholic and was not free from every scruple concerning the money accepted, he went to confession and opened his conscience to the confessor. The latter, however, doubts whether Titius sinned by accepting the money, or whether and to whom he is bound to make restitution. Hence it is asked:

1. In a contract of buying and selling, what is a just price and how is it determined?
2. What are the obligations of an agent?
3. What is to be said of the case?

SOLUTION

1. This first question is answered above, p. 304.
2. This question is answered on p. 309.
3. The case. The captain of a ship went to a certain port to coal. In port he received £10 in notes from a coal merchant asking for the privilege of supplying him with excellent coal at the usual prices. The captain knew that the money was not a pure gift and that somehow the coal merchant would take it out of the coals, but he accepted the money, as everybody else did the same, and asked the merchant to supply him with coals. However, he was not without scruples and mentioned the matter in his next confession.

Titius can perhaps be excused from a sin against justice. The merchant without doubt had a right to make a reasonable profit on the transaction, and if the £10 which he gave to Titius came out of that profit, and the coal supplied was not deficient in quality or quantity according to the ordinary standard, neither party committed sin, and Titius may keep his secret commission. Titius, however, by taking the money made it difficult for himself to insist on the proper quantity and quality of coal being supplied, and if in fact the coal was deficient in either way, both parties sinned against justice and are bound to make restitution to the owners of the ship who were defrauded.

Case 12. A Proposed Monopoly

Julius, a Catholic priest, when he had bought shares in a certain company that manufactured soap for a large sum of money, received notice that on a certain day the shareholders would discuss whether the company should join itself to a new soap monopoly. Julius ordinarily takes no active part in the business of the company, but he would like to know whether he is bound to cast a vote against the proposal, inasmuch as many things are written in newspapers against the monopoly, but especially that it sells fifteen ounces of soap in place of sixteen, that several officers have already been dismissed as unnecessary, and that the more injurious suspicions are not without foundation in view of the things that we hear concerning monopolies in America. Hence it is asked:

1. Is it lawful for a cleric to trade?
2. What is a monopoly, and is it lawful?
3. Can anyone sin against justice by abstaining from action?
4. What is to be said of the case?

SOLUTION

1. Is a cleric allowed to trade?

No; a cleric is forbidden by ecclesiastical law to trade in the strict sense; that is, to buy commodities with the intention of selling them unchanged for profit. It is probably not unlawful for clerics to have shares in industrial companies, provided that they do not take an active part in the business, e.g., as directors.¹

¹ *Manual of Moral Theology*, vol. i, p. 616.

2. What is a monopoly, and is it allowed?

A monopoly is the exclusive right belonging to one or to a certain number to sell some commodity. A monopoly is not morally wrong, provided that there is nothing reprehensible in the method of conducting business and the prices are fair and reasonable.²

² The same work, p. 535.

3. May a sin against justice be committed by simply abstaining from action?

Yes; such negative co-operation is a sin against justice whenever one's office or duty require one to prevent an unjust action.

4. The case. Julius, a priest, bought shares in a soap company. One day he got notice of a meeting to be held by the shareholders to decide whether the company should join a new monopoly of soap-makers. Julius was not clear as to whether monopolies are wrong and whether he was not bound to vote against the proposal.

From what has been said it is clear that monopolies are not necessarily immoral if prices are fair and if there is nothing wrong in their business methods. Hence it is a question of fact in each case. The soap monopoly sold fifteen ounces of soap for sixteen. If this was publicly known and the price was reasonable, there was nothing immoral in this. Several officials had been dismissed as unnecessary. This, too, might have been perfectly lawful. Suspicions resting on what some monopolies and trusts are sometimes guilty of can not afford sufficient ground for condemning all monopolies. Julius should make inquiries about the directors of the monopoly and its methods of doing business, and if he finds nothing objectionable, he will not be bound to vote against the proposal. If he does find anything objectionable, he will be so bound, for the shareholders are responsible for the acts of the company which does business in their name and for their benefit. If the monopoly is formed, Julius should keep an eye on its business methods, and if he discovers anything unjust or uncharitable in them, he should endeavor to correct it, or withdraw from the company.

Case 13. Methods of Monopolies

Titius, a very wealthy Catholic, wishes to know whether it is lawful to invest money in a very large company called a “Trust” or “Combine.” Such companies, however, are accustomed to proceed in this way: They reduce the expenses of management, inasmuch as one person is able to direct several centers of business; they also reduce the expenses of carriage, inasmuch as from several centers the nearest can always be selected; and, when expenses have been reduced by these and other means, they can sell at a lower price than others. Thus, within a fairly short time, they acquire the whole trade in some article in the place where they establish their headquarters, for competitors either cease to trade or associate themselves with the company, which, left alone, can itself fix the price at which things are sold. When they have obtained the trade of one city, they attack another by similar methods and quickly overcome all competitors. Hence it is asked:

1. What is a monopoly, and to what extent is it lawful or unlawful?
2. What is the just price of things, and how is it recognized?
3. What is to be said of the case?

SOLUTION

1. This question is answered above, p. 315.
2. This question is answered on p. 304.
3. The case. Titius, a rich Catholic, wants to know if he may put his money into a trust or combine. The combines lessen working expenses and are thus able to sell cheaper to the public. There is no moral difficulty in the question so far. Even if by selling cheaper they may drive competitors out of the trade, still as the public good is to be preferred to that of individual tradesmen, there is no moral objection to their action. However, when a trust comes into a place and begins to undersell competitors with the intention of driving them out of the trade or of compelling them to join the trust, and when it has conquered all competitors, of raising prices to as high a figure as is safe, there is at least a sin against charity. For it is against charity to use the greater economic power of a combine to ruin or to coerce rivals. If the prices at which the combine sells after it has acquired a monopoly in a place are higher than would prevail if the combine had not driven competitors out of the field, its action is also against justice.

Case 14. A Proposed Corner in Wheat

Caius, a very wealthy grain merchant, desires to become still wealthier. Hence he asks other rich men, after pooling their money, to buy all the grain that is in the market, if it can be done, in order that they may afterward sell it at a higher price and thereby gain an enormous sum. Julius, a Catholic, among others is asked to contribute money to the business, and indeed consents, but is soon to repent of it, for, whatever the conspirators do, the price of grain gradually falls and Julius loses the sum contributed. Afterward he comes to confession, and his confessor, doubtful concerning his obligations, asks:

1. What is a monopoly?
2. Is a monopoly unlawful, and why?
3. What is to be said of the case?

SOLUTION

1. This question is answered above, p. 315.
2. This question is answered on p. 318.
3. The case. Caius, a rich merchant, wished to make a corner in wheat and asked some other rich men to join him. The intention was to buy up all the wheat available, and then sell it at a higher price. Such an intention is at least uncharitable, for if the attempt succeeds it produces widespread hardship and disaster. If the prices demanded by the monopoly are higher than are fair and reasonable and than what would rule if there were no monopoly, the monopoly is also against justice, and entails the obligation of making restitution to those whom it has injured.

Julius therefore committed sin by joining the would-be monopolists. However, as they did not succeed in their design it was only a sin of intention, and Julius may be absolved if he is sorry for what he has done and firmly resolves never to do the like again.

Case 15. Gambling in "Futures"

Titius, a grain merchant, asks the judgment of his confessor concerning the lawfulness of a certain manner of acting by no means infrequent among merchants. According to Titius, therefore, merchants frequently buy and sell grain at a certain price fixed for a certain future day, without, however, in any way intending to deliver the grain, but only to pay the difference between the fixed price and the price at which grain is sold in the market when the day has arrived. Then, by no means infrequently, several merchants enter into a certain agreement so that, when the determined day approaches, if they wish the market price to rise, they buy a very large quantity among themselves in the said manner; if they wish the price to fall, they sell a very large quantity in the same manner at a reduced price. The effect of this manner of acting is that the price in fact rises or falls according to their will. Indeed, when by this manner of acting the price has fallen, they buy a very large quantity of grain at the reduced price, not fictitiously but in reality, and, when the price has risen on account of such buying, they sell it again, obtaining a very great profit. Hence it is asked:

1. What conditions are required in order that a wager be honorable?
2. Do those who conspire to raise or lower the price of some thing sin, and in what manner?
3. What is to be said of the case?

SOLUTION

1. What conditions are required that betting may be permissible?

The bet must not be an incentive to sin; the object of the bet must be uncertain for both, at least in the sense that neither may influence events in his own favor, and both must understand the bet in the same sense and be prepared to stand by the issue of the event. Moreover, what is staked must be at the free disposal of him who bets.¹

¹ *Manual of Moral Theology*, vol. i, p. 560.

2. Do those who conspire together to raise or lower the price of a commodity commit sin, and how?

If a fair and reasonable price can not be got for a commodity by leaving the sale to competition, there is no harm per se in conspiring together so that a fair price may be obtained. This holds of combinations of both buyers and sellers of the commodity; the buyers may combine to lower the price, the sellers to raise it, until a fair, and reasonable, price is secured. If prices are already fair, and reasonable, it is at least uncharitable to strive by combination to influence the market in one's own favor to the damage of others; it will be against justice if by combination prices are altered so as to be unfair and uncharitable.²

² The same work, p. 536.

3. The case. Titius, a corn merchant, asks if it is wrong to deal in “futures,” “time bargains,” or “differences.” In itself such dealing is betting on the future price of some commodity; it is not clear that it does harm to genuine buying and selling of commodities, and so it will not be wrong if the conditions laid down above for the lawfulness of betting are fulfilled. “Bull” and “Bear” transactions, as they are called, are designed to influence the market in favor of the operator, and they are immoral except as means of self-defence against aggression. To endeavor by artificial means to lower the market price when it is fair and reasonable, with the intention of buying in at a low rate and afterward selling at a higher, is wrong and unjust. Apart from this, there would be no harm in buying at the current rate when prices are low with the intention of selling out at a profit when they rise.¹

¹ *Manual of Moral Theology*, vol. i, p. 560.

Case 16. Liability of Directors

Caius, an English nobleman and a Catholic, is asked by Julius, a promoter of commercial and industrial companies, to give his name as a director to a certain new company being promoted by him. Since Caius knows absolutely nothing concerning the affairs of that company, and does not intend to learn, he discloses his ignorance to Julius, who nevertheless denies that ignorance in any way prevents him from becoming a director, since very many persons, led by the noble name of a director, are accustomed to contribute money to companies; indeed, he offers Caius five thousand pounds if he consents to give his name. Caius asks for time to deliberate, and meanwhile consults a confessor concerning the lawfulness of the business. Hence it is asked:

1. What is a contract of partnership?
2. What are the obligations of directors of companies?
3. What is to be said of the case?

SOLUTION

1. What is the contract of Partnership?

Partnership is the relation which exists between persons who carry on business in common with a view to profit. By English law any persons may enter into such a partnership, provided they do not exceed twenty in number, or ten in the case of a banking business. The partners retain their individuality, and each partner is an agent for the rest in the matters relating to the partnership. If seven or more people wish to form a company, they subscribe their names to a Memorandum of Association and procure registration by the Registrar of Joint Stock Companies. Thereupon the members become a body corporate, a legal personality, which has rights and obligations distinct from those of the members. Modern companies are usually formed with limited liability, so that the individual members are liable for the company's debts only to the extent of their shares in its capital.

2. What are the obligations of company directors?

Directors are those appointed to manage the affairs of a company. They are the company's agents for the transaction of its business, and they should have the knowledge, capacity, integrity, and diligence required for such a position. Those who subscribe to the capital of the company are frequently led to do so by seeing the names of capable and honest men among the directors. Hence the liability of directors both in the forum of conscience and of law. English law makes directors in general liable for false statements in the company's prospectus, for violation of duty, and for gross negligence of duty.

3. The case. From what has been said it is obvious that Caius can not allow himself to be made a director of the future company without knowing more about it. The promoter wishes to use him as a decoy, and if he allows him to do so, he will be responsible for the loss inflicted on shareholders if the company turn out to be unsound. Caius must therefore either satisfy

himself that the proposed company is a sound and honest enterprise, or he must refuse to allow himself to be made a director.

Case 17. Usury

Caius, a Catholic moneylender who doubts concerning his manner of transacting business, consults a confessor and says that he asks the same interest as others demand, which, with respect to the poor, who not rarely borrow a few shillings to relieve daily necessities, is fixed by this condition: that they pay one penny for each shilling borrowed per week. But since Caius recently read in a newspaper that this interest is altogether usurious and unjust, he asks the confessor what is to be done. Hence it is asked:

1. What is usury, and by what law is it prohibited?
2. Can any interest justly be demanded for money lent, and how much and by what title?
3. How are the ancient and present practices in this matter to be reconciled?
4. What is to be said of the case?

SOLUTION

1. What is usury and by what law is it forbidden?

Usury is forbidden by natural, divine, and ecclesiastical law. The sin was defined by Benedict XIV in his encyclical letter *Vix pervenit* in these terms: "The sin which is called usury consists in this, that from the loan for consumption (which of its own nature requires that only so much as was received should be returned) the lender desires more to be returned to him than the borrower received, and therefore contends that some gain over and above the principal is due to him merely on account of the loan." If we accept the theory of many modern theologians and say that in our capitalistic society money is no longer a fungible but an instrument of production, we must say that usury in the strict sense is not committed now by taking interest on money loans, but the name may be used to designate the sin which is committed by exacting excessive interest.

2. May interest be justly exacted for a money loan, how much, and by what title?

Yes; interest may now in our capitalistic society be exacted for a money loan, as money is now virtually an instrument of production and no longer merely a fungible. The amount which may be exacted must be fair and reasonable in the judgment of prudent men.¹

¹ *Manual of Moral Theology*, vol. i, p. 516.

3. How can the old and the modern practice of the Church be reconciled in this matter?

By the economic, industrial, and political changes which make modern society so different from former ages.²

² The same work, pp. 515 and following.

4. The case. The interest charged by Caius on his loans to the poor is 433.3 per cent per annum. This is altogether excessive and extortionate. There may be considerable labor and trouble involved in collecting such small debts, and especially when the debtors so easily and so frequently change their places of abode. In some cases also there may be great risk of losing the principal. For these reasons, although charity might require that the poor should be helped gratuitously, yet a sin against justice would not be committed by exacting a high interest when circumstances justify it. It might rise to 20, 40, or 60 per cent per annum. But over 433 per cent per annum seems altogether extortionate and unjust.

Case 18. Life Insurance

Titius insured his life with a certain company and assigned the policy to his wife so that, in the event of his death, she might have the means to support herself and the children. When questioned in the name of the company concerning his age, however, he said that he was 36 years old, while in fact he was 38. But it happened after five years that Titius, oppressed by misfortunes and indulging in drunkenness on account of melancholy, fell into a well and died. Since the insurance company knew nothing of the lie concerning his age or of the drunkenness that was the cause of death, it paid five hundred pounds to the wife without delay. The wife, however, doubted whether she could retain the money. Hence it is asked:

1. How many species of the contract of insurance are there?
2. What is the force of the conditions that are customarily attached to insurance?
3. What is to be said of the case?

SOLUTION

1. How many species of the contract of insurance are there?

There are three: Marine, Fire, and Life insurance.¹

¹ *Manual of Moral Theology*, vol. i, p. 554.

2. What is the force of the conditions which are usually annexed to insurance policies?

The effect of such conditions depends upon the intention of the parties to the contract, and in the case of insurance companies in general it is difficult to say what the intention is. The chief difficulty is to distinguish when the contract is absolutely null and void, so that no rights are conferred by it, and when it is only voidable at the option of the insurer. In general it may be said that if there were substantial mistake in the contract, it is null and void; if there were only accidental mistake, it is only voidable. Mistake will be substantial when the insurer did not intend to contract on the basis which in fact exists; it will be accidental when a full knowledge of the facts would not have prevented him from entering into the contract, but would only have varied its terms.¹

¹ *Manual of Moral Theology*, vol. i, p. 555.

3. The case. Titius insured his life and assigned the policy to his wife. He gave his age as 36, whereas it was 38. The policy would not be void on this ground. The only effect of the truth being told would be to raise the amount of the premium. After five years Titius took to drink on account of misfortunes, and while in drink killed himself by falling into a well. The insurance company knew nothing about the lie nor about the cause of Titius' falling into the well, and paid the insurance money. In insurance policies there is usually a suicide clause, but even suicide does not usually void the policy, especially when it has been assigned to another. A recent authority says: "Suicide of the assured was originally a reason for the avoidance of the

policy. But even then, if the assured had bona fide assigned his policy and notice of the assignment had been given to the company before the suicide had taken place, the assignee would be entitled to the assurance money. And this is the law to-day, and can be relied upon in the event of the death of an assured by his own hand under such circumstances that his suicide is exempted from the risks assured against, provided of course that it is a bona fide assignee who makes the claim. But the modern practice of life assurance is either to make no distinction at all in the case of suicide, or to make only some limited or temporary distinctions.”¹

¹ Knight, *Business Encyclopaedia*, under the entry “Life Assurance.”

The wife of Titius may therefore keep the money she has received from the insurance company. Titius should indeed have paid higher premiums than he did, in consideration of his being two years older than he said he was. The company will have the right to deduct the difference from the sum paid if it comes to know the real age of Titius.

Case 19. A Doctor's Predicament

Lucius, a physician, asked a confessor what was to be done by him in these circumstances. Caius, a workman employed by Titius, had charge of a certain machine full of danger. One day Caius carelessly applied his mouth to a valve in the machine which he ought to have touched only with the instrument given for this purpose. A violent explosion followed and inflicted a grave wound upon Caius, so that he soon died. Before death he disclosed the cause of the explosion to Lucius alone, lest the insurance company hear of it and deny to his wife, destitute of other means of support, the sum of one thousand pounds for which his life had been insured. This in fact happened; for, because it suspected that some negligence of Caius had intervened, it refused to pay the money, and, when the wife of Caius brought an action against the company in a civil court, the company summoned Lucius as a witness. Hence it is asked:

1. What is a contract of insurance?
2. Can an entrusted secret be revealed, and when can or must it be revealed?
3. When questioned in courts, is a sole witness bound to disclose what he alone knows?
4. What is to be said of the case?

SOLUTION

1. What is the contract of insurance?

In a contract of life insurance, with which we are here concerned, the insurer undertakes to pay a given sum to another upon the happening of a particular event contingent upon the duration of human life in consideration of the immediate payment of a smaller sum or certain equivalent periodical payments.¹

¹ *Manual of Moral Theology*, vol. i, p. 554.

2. May a professional secret be revealed, or ought it to be revealed, and when?

Professional secrets may and ought to be revealed when this is necessary to avert serious harm to the public weal, and also when the person whose secret is in question is abusing it to cause serious harm to an innocent person.²

² The same work, p. 472.

3. Is an only witness who is examined in court bound to give evidence on what he alone knows?

In canon law the axiom held—*Testis unus testis nullus*. However, in English law, as in most modern systems, a solitary witness is admitted as sufficient evidence of a fact, and so an only witness, if interrogated, will be obliged to give evidence, unless there is some reason to the contrary.³

³ The same work, p. 595.

4. The case. If Lucius knew how the accident happened from other sources than from Caius himself, as, e.g., from his examination of Caius' wounds, or from other informants, he will be bound to state it when required in court to do so. If the only source of his knowledge was the communication made under secrecy by Caius himself, he should say that he does not know how the accident happened, if he is asked about it. It would then be a professional secret, which he is not bound to reveal in the circumstances of the case before us. Caius was not guilty of fraud; he was only thoughtless, and his wife may take the insurance money if she can get it.

Case 20. A Fraudulent Insurance

Titius, a dealer in furniture falsely represented as antique, insures his goods, which perhaps are worth one thousand pounds, upon the customary terms with an insurance company for ten thousand pounds. This company, however, reinsures half of the goods with another company and a fourth part with a third company. A little afterward the insured goods perish by fire, and Titius, congratulating himself, receives ten thousand pounds from the first company. Afterward, however, he doubted whether he had received it justly, for, although he had paid the premium, as it is called, proportioned to the sum received, nevertheless the latter exceeds the value of the goods. Hence he explained the doubt to a confessor in order that he might know his obligations. Hence it is asked:

1. What is a contract of insurance, and concerning what things is it ordinarily entered into?
2. What conditions are ordinarily annexed to this contract in England, either by the express consent of the parties, by law, or by custom?
3. What is to be said of the case?

SOLUTION

1. What is a contract of insurance, and what is its ordinary subject-matter?

Marine, Life, and Fire insurance are the general types of this contract, but nowadays most risks can be made the matter of insurance. The contract of Fire insurance, with which we are here concerned, is one of indemnity in consideration of a premium paid by the insured, against loss, not wilful, caused by fire, to a given account, upon certain subjects.

2. What are the conditions ordinarily annexed to this contract in England, either by the express consent of the parties, by law, or by custom?

This contract is usually effected on the basis of a proposal containing a list of questions which must be truthfully answered by the insured. Everything that can enable the insurer to arrive at an estimate of the risk insured against must be disclosed. The property insured, its value, locality, and whether it is insured with other companies, must be indicated. If any change is made which increases the risk, it must be made known to the company. On any loss to the goods insured being incurred by fire, the insurer must make a particular statement of the details of his loss, with an estimate of the value, confirmed if required by a statutory declaration of the truth of the account.¹

¹ Knight, *Encyclopaedia*, under the entry "Fire Insurance."

3. The case. Titius, an old curiosity dealer, insured his goods for a sum ten times their value. In this he was guilty of fraud; the company had no intention of contracting with him to pay such a sum. He has no right to keep more than what covers his loss, and he must make restitution in some way to the company from which he obtained the money. This company will then be under the obligation of squaring accounts with the other companies which took part of the

risk. Titius may deduct from the sum to be restored the difference between the premiums which he paid and those which he should have paid on the real value of the property insured.

The Eighth Commandment

Case 1. Essence of a Lie

Titius, a religious, is not rarely occupied in preaching the word of God and in giving missions to the people. Having returned to the monastery, he is accustomed to relate to the brethren marvelous things concerning what was seen and heard by him while he was outside the monastery. Almost all of them, however, are entirely fictitious, devised and uttered by Titius in order to increase the esteem of himself among the brethren and to delight them. Without scruple he also invents excusing causes in order that he may remain longer outside the monastery, and with them appeases the superior. He strongly maintains that he does not lie in acting thus, since he harms no one and the essence of a lie consists in the violation of another's right to the truth. Hence it is asked:

1. What is a lie, and how many kinds are there?
2. In what does the malice of a lie consist, and is it ever lawful to lie?
3. What is to be said of the case?

SOLUTION

1. What is a lie, and how many sorts of lies are there?

A lie is a speech against one's mind. Lies are divided into jocose, officious, and hurtful lies.¹

¹ *Manual of Moral Theology*, vol. i, p. 464.

2. In what does the malice of a lie consist, and is it ever lawful to lie?

Some would put the malice of lying in the denial to others of that to which they have a right. Others would say that it lies in the deceit practised on others. The common Catholic teaching follows St. Thomas in putting it in the disorder which is intrinsically in saying that which is known to be false. We have from nature the power of communicating our thoughts to our fellow men, and this power is necessary for a social being like man. Those thoughts which are to be communicated to others should be communicated truthfully, and there is a perversion of right order, if this is not done; the virtue of veracity is violated. As lying is intrinsically inordinate and wrong, it is never allowed to tell a lie.¹

¹ *Manual of Moral Theology*, vol. i, p. 465.

3. The case. Titius, a Religious, frequently goes out of the monastery to preach. On his return he has wonderful things to tell the brethren, but for the most part, they are pure fabrications, invented to amuse his brethren and to add to his own reputation. He says he does nobody any harm by these tales, and that therefore he does not lie. Titius is wrong. Hurtful lies are not the only species; there are also jocose and officious lies, and Titius is guilty of jocose and officious lying. He says what he knows to be false, and he says it with the intention of deceiving others, or else there would be no prospect of his lies adding to his reputation. Much more is this the case when he invents reasons to be laid before the superior in order to excuse himself for making a longer stay than necessary out of the monastery. In this he is guilty of officious lying.

He is also imperceptibly lessening his own estimation of the virtue of truth, and accustoming himself to trifle with it.

Case 2. A Professional Secret

Titius, a Catholic advocate, asked a confessor in the sacred tribunal whether he was bound to reveal an occult impediment to marriage in these circumstances. The banns were recently proclaimed concerning the marriage soon to be entered into between Julius and Julia. Titius, however, had recently been consulted by Julius concerning the sum of money to be assigned for the support of his offspring begotten from secret fornication with the sister of Julia. Hence the confessor asks:

1. What is a secret, and how many kinds are there?
2. Is it lawful to reveal secrets, and for what cause?
3. What kind of obligation does the proclamation of banns introduce?
4. What is to be said of the case?

SOLUTION

1. What is a secret, and how many sorts of secrets are there?

A secret is some hidden matter concerning another, which can not be made known without causing him injury or displeasure. Besides the secret of the seal of confession, which is treated of elsewhere, divines distinguish three kinds of secret: the natural secret, the promised secret, and the secret which is communicated under an express or implied contract of secrecy.¹

¹ *Manual of Moral Theology*, vol. i, p. 470.

2. May secrets be revealed sometimes, and for what cause?

Natural and promised secrets may be revealed when the public good requires it, or when an innocent person can not otherwise be defended. Even professional secrets may be revealed when the public weal would otherwise suffer seriously, and when he whose secret is in question abuses the privilege of secrecy to do harm to an innocent person.¹

¹ *Manual of Moral Theology*, vol. i, p. 471 and following.

3. What sort of obligation is imposed by the proclamation of banns?

A grave obligation is imposed of disclosing to the priest any known impediment of the marriage. Even if the impediment be known under natural or promised secrecy, the obligation to disclose it will arise. It will not arise usually if the secret be of the third and stricter kind.²

² The same work, p. 265.

4. The case. Titius, a Catholic lawyer, wishes to know whether he is bound to make known to the parish priest the diriment impediment of affinity in the first degree in the collateral line which in his professional capacity he has learned exists between Julius and Julia, who are going to be married. No; he should not tell the parish priest, as the matter is a professional secret, but he

should take an opportunity to warn Julius about the impediment, if Julius does not know of it, so that a dispensation may be applied for in time before the marriage.

Case 3. A Puzzled Doctor

Some years ago “Whole-time medical officer of health” wrote to the *British Medical Journal*, asking what he was to do in the following case: “A medical practitioner has consulted me under the following circumstances: He is attending a railway signalman for asthma. The attacks come on suddenly and are so severe that the patient falls on the floor, struggling for breath, and is totally incapacitated for an hour or longer. He has not yet had an attack in his signal-box, where he is on duty alone, sometimes for many hours at a time. The man declines to inform the railway company of his illness, thinking it would result in his discharge, or at least reduction of wages. The doctor is afraid that if he reports the case to the railway company who are not his employers, and therefore not entitled to a report from him, he will have to stand an action for damages brought against him by the patient. On the other hand, he fears that unless he breaks the seal of professional secrecy, there will probably be a railway accident, possibly on a large scale, as many London and other expresses traverse the line.”

SOLUTION

We must take the facts of the case as stated. The signalman's complaint might at any time make him incapable of attending to his duties, and in the doctor's opinion there would probably be a big accident. The signalman had no right to continue at his post to the public danger; under the circumstances he was unfit to hold the post, as he could not, with reasonable certainty, guarantee that he would be able to fulfil its duties. His refusal to tell his employers threatened injury to them and to the public. In such a case the obligation to preserve even professional secrets ceases, and charity obliges anyone who is acquainted with the facts to make them known in the proper quarter. The doctor should therefore inform the company that the man is unfit to be left alone at his post. The rights of the public must be safeguarded, even at the expense of the individual.

Case 4. A Syphilitic Patient

Titius had entered into an engagement with Caia; when Julius, the physician of both families and a most intimate friend of the father of Caia, heard this, he was tormented by doubts of conscience. For under the secrecy of consultation he knew that Titius suffered from a syphilitic disease which would most certainly infect his future wife; hence he was uncertain whether he could or ought to disclose the condition of Titius to the father of Caia or not. Therefore, being a good Catholic, he approached a confessor to seek counsel. Hence it is asked:

1. What is a secret, and under what obligation is it to be concealed?
2. Is it lawful to reveal a secret, and when is it lawful or even obligatory?
3. What is to be said of the case?

SOLUTION

1. This first question is answered on p. 337.
2. This question is answered on p. 338.
3. The case. While Titius is suffering from his disease, he can indeed marry, but he should not use marriage rights until he is cured, or at least without the consent of his wife after telling her about his state. In these circumstances Julius has no right to tell Caia's father about the disease from which Titius is suffering. As he is the family doctor he may and should tell Titius either to defer marriage, or at least not to use his marital rights, for a time until he is cured.

Case 5. A Black Sheep in the Fold

Julius, a boy being educated in a certain college, one day approached Caius, a master, and asked that he might consult him under secrecy. When Caius consented, Julius indicated another, very wicked boy in the college who was corrupting the others by teaching them a certain most grave sin and crime. Caius answered that Julius was bound to denounce that boy to the superiors; the latter, however, denied that he would do that or anything else that would bring the boy into danger. When Caius made no progress with Julius, he began to think about his own obligations in the case. Hence it is asked:

1. What is a secret, and what is its obligation?
2. Is it lawful to reveal a secret, and is it sometimes obligatory?
3. What is to be said of the case?

SOLUTION

1. This question is answered on p. 337.
2. This question is answered on p. 338.
3. The case. The only way of preventing very serious harm being done in the future among the boys of the college is to denounce the bad boy to the authorities. Julius is bound to do this in the first place, but he refuses to do his duty. Under these circumstances the public good requires that Caius should undertake the task. The obligation even of a strict secret ceases in such circumstances. Caius should therefore inform the authorities about what he has heard from Julius.

Case 6. Reading Another's Letters

Caia, a Catholic, often reproaches Caius, her Protestant husband, concerning his excessive familiarity with Bertha, who instructs their children in the first elements (governess). At length, after some time, by her just complaints Caia brings it about that Bertha is dismissed from the house and employment. A little afterward Caia observes a letter written in Bertha's hand brought to Caius in the morning with others. She secretly takes it, opens and reads it, and throws it into the fire. Afterward, however, in order to quiet her conscience, she asks a confessor whether she sinned or not by acting thus. Hence it is asked:

1. What is a secret, and how is it divided?
2. Is it lawful to open and read the letters of another?
3. What is to be said of the case?

SOLUTION

1. This question is answered on p. 337.
2. Is it lawful to open and read another's letters?

As a general rule it is not, and it will be more or less against justice if the letters contain secrets which the owner of the letters is rightly unwilling that others should know. The gravity of the sin will depend on the seriousness of the injury or offence done by opening the letters. They may, however, be opened for good reason by the authority of the State, and by private persons to protect their own rights if they have a well-grounded suspicion that those rights are imperiled.¹

¹ St. Alphonsus, book v, no. 70.

3. The case. Caia had good grounds for objecting to secret communications between the late governess and her husband. She did not therefore commit a sin when she opened Bertha's letter; she was justified in protecting her rights. It must be presumed that there was something objectionable in the letter to cause Caia to throw it into the fire. She need have no scruples of conscience now on what she had done.

Case 7. Privileged Secrets

Albert, a Catholic physician, consults Caius the priest concerning the obligation of preserving a secret; for he says that recently the matter has been greatly agitated among physicians and that they do not all agree among themselves. For while, he says, some say that a woman who had consulted a physician in order to procure an abortion is to be denounced to the police officers, others, on the contrary, assert that the secret of any client of sound mind is never to be disclosed to anyone without his consent; and the civil judges themselves doubt whether a physician who in court refused to disclose a secret entrusted to him should be punished as contumacious. Hence Albert wishes to know the Catholic doctrine concerning secrets to be preserved, and specifically whether he can or is bound to denounce a woman who had asked him for a medicine by which she could procure an abortion. Hence it is asked:

1. What are the various species of secrets?
2. Can the several kinds of secrets be disclosed, and when?
3. What does our municipal law establish concerning this matter?
4. What is to be said of the case?

SOLUTION

1. This question is answered on p. 337.
2. This question is answered on p. 338.
3. What does English law lay down on this matter? "Professional communications between counsel, solicitors, or their clerks, and their clients, made in confidence, can not be disclosed without the client's consent, nor can a client be compelled to disclose any communication made in confidence to his professional adviser."¹ It is said that the case of privilege does not extend beyond the persons here mentioned, but doubts have been expressed in court whether doctors and clergymen can be compelled to disclose what has been told them professionally in confidence. Moreover, "a witness can not be asked, and will not be allowed to state, any facts, or to produce any documents, the disclosure of which may be prejudicial to the public interest, e.g., in the case of some high documents of State."²

¹ Indermaur, *Principles of the Common Law*, p. 471.

² The same work, p. 476.

4. The case. Whatever English law may say on the matter, in the forum of conscience a doctor may not denounce to the authorities a woman who has asked him to give her medicine to procure abortion. Her criminal intention is only known to him as a professional secret, and such a secret he should faithfully keep when it refers to a past act. He should tell the woman what a crime she is guilty of in intention at least, and do what he can to deter her from

committing it. He may threaten to inform against her if she attempts it, and if he can not prevail on her to give up the idea of procuring abortion, he will be justified in informing those who can prevent it, and even the public authorities, as there is question of saving the life of the innocent child which is threatened by the person whose secret is in question. In those circumstances the right to the secret lapses.

Precepts of the Church

Case 1. A Soldier's Difficulties

Caius, a centurion of the British militia (commonly, Officer of Militia) and a Catholic, who ordinarily has charge of a very extensive business, has experienced difficulties more than once concerning the obligations of fasting and abstinence. Being of robust health, he is much devoted to hunting; and when he was recently free from business, he indulged in hunting on a fast day without, however, fasting. On another Friday he was invited to a formal dinner of the regular regiment to which his own militia regiment is attached; he accepted the invitation and did not observe abstinence. Finally, during the past Lent he obtained a dispensation from the law of fasting; nevertheless, it happened more than once that on those days on which meat was permitted by indult to those fasting at the principal meal, he himself ate meat twice or even three times. Afterward, however, moved by the stings of conscience, he asked a confessor whether he had acted rightly. It is asked:

1. To what does the law of the ecclesiastical fast bind?
2. What excuses from the laws of fasting and abstinence?
3. What is to be said of the case?

SOLUTION

1. To what does the precept of the ecclesiastical fast bind?

Essentially, fasting consists in taking but one full meal in the twenty-four hours and that after mid-day, but it also implies abstinence from flesh meat unless leave be given to eat it.¹

¹ *Manual of Moral Theology*, vol. i, p. 573.

2. What excuses one from the precepts of fasting and abstinence?

Physical or moral impossibility of observing the law arising from ill health, laborious occupations, or other source, excuses from the observance of these precepts; a dispensation may be granted by the bishop or by the parish priest.

3. The case. Caius, an officer of militia, in robust health, went hunting on a fasting-day and did not fast. We suppose that Caius ordinarily fasts, and that his ordinary business duties are not sufficiently laborious to excuse him. If he frequently went hunting on fasting-days, and excused himself from fasting, he would do wrong. If he found that the labor of the chase was incompatible with fasting, he should abstain from such laborious recreation and observe the laws of the Church. However, if this happened only once in a while, and Caius had some good reason for joining the hunt on that particular day other than the mere wish to escape fasting, so that it would have been seriously inconvenient not to attend the hunt, and he finds that hunting is incompatible with fasting, he was not blameworthy in what he did.

On a Friday he accepted an invitation to dinner given by the regiment to which his corps was attached, and he did not abstain. There is more difficulty in excusing Caius from blame in this case. If

he could easily have declined the invitation, or if, having accepted it, he could easily have made a dinner on fish or other lawful food which is generally provided at such dinners, he did wrong in eating flesh meat on a Friday. Still, again, if it was a very special occasion, and he could not absent himself without serious inconvenience, and finding himself seated at dinner he could not procure fish or other lawful food, he might be excused from sin if, without giving scandal, he took flesh meat. In such cases he might ask his parish priest to give him a dispensation, and thus avoid all difficulties.

Last Lent he got a dispensation from fasting, and on days when flesh meat was allowed by indult to fasters at the principal meal Caius took meat two or three times in the day. Whether Caius was justified or not in doing this depends on the terms of the dispensation or the expressed intention of him who granted it. The dispensation might be granted to eat meat only once in the day. This does not seem to have been done; we must suppose that it was granted without limitation. In that case Caius acted within his rights. Those who fast may take meat by indult only once in the day, but Caius was dispensed from fasting.

Case 2. Difficulties About Fasting

Titius, a missionary priest in England, in order that he may be able, in accordance with the First Council of Westminster, diligently to explain the laws of fasting at the beginning of Lent to the people committed to him, goes through a certain recent author and, from the reading of him, proposes for solution certain difficulties that have arisen. He asks in particular:

1. Is milk allowed whenever food or drink is taken?
2. What kinds of food and how much are allowed at the collation?
3. Many could fast by interchanging the little breakfast and the collation. Are they bound to this if they are unable to fast otherwise?
4. How often in the day may those dispensed from fasting eat meat when meat is permitted by indult?
5. Does Titius have the power to dispense from fasting, and whence does he have it?

SOLUTION

1. Is milk allowed on fast days whenever the faster eats or drinks?

No; lactinia, i.e., milk, butter, and cheese are by the common law forbidden at least during Lent whenever flesh meat is forbidden.¹ In some places lactinia are also forbidden on other fasting days outside Lent. In England milk and butter are allowed by custom at the full meal outside Lent, and at least by indult in Lent at the full meal. By concession of the Holy See² milk, butter, and cheese are allowed by way of condiment at collation, also on all fasting-days except Ash Wednesday and Good Friday.

1 Proposition 32, condemned by Alexander VII.

2 Sacred Office, March 18, 1880.

2. How much food and of what sort is allowed at collation?

About eight ounces of lighter food, excluding always flesh meat and eggs, are allowed at collation. In some places eggs also are allowed. According to an instruction issued by the archbishop and bishops of England in 1883, when fish is taken at collation, the quantity of it should not exceed two or three ounces.

3. Many could fast by taking the collation in the morning and two ounces of food in the evening. Are those who can not otherwise fast bound to adopt this method?

No; it is indeed allowed to fast in that way for some good reason, but as it is not the usual way of fasting in England, there is no obligation to adopt it.

4. How often may those who are dispensed from fasting eat meat on days when meat is allowed at the principal meal to fasters by indult?

That depends on the extent of the dispensation, but unless there is an express limitation, it is generally understood that they may eat meat as often as they please.

5. Have missionary priests in England the power of dispensing from fasting, and whence do they obtain it?

They seem to obtain the power of dispensing those who are committed to their charge from custom, the source whence parish priests obtain it. The existence of the power seems to be implied in the First Council of Westminster, decree XXIII, no. 3.