

QUESTIONS ON JUSTICE FOR PRESENT-DAY USE, SCHOLASTICALLY DISPUTED

Arthur Vermeersch, S.J.

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THE ENTIRE

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WHICH, IN THE COLLEGE OF THE SOCIETY OF JESUS AT LOUVAIN,

L. DE SAN, G. LAHOUSSE, AND A. VERMEERSCH, S.J.

TAUGHT

MORAL QUESTIONS

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ON JUSTICE

FOR PRESENT-DAY USE

SCHOLASTICALLY DISPUTED

BY

A. VERMEERSCH, S.J.

DOCTOR OF LAW AND POLITICAL SCIENCES

PROFESSOR OF MORAL THEOLOGY AND CANON LAW

AT THE MAJOR COLLEGE OF THE SOCIETY OF JESUS IN LOUVAIN

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and the Most Illustrious Bishop of Bruges

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Letter of Pope Leo XIII

Beloved Son, health and apostolic benediction.

We have received the two volumes recently published by you, in one of which you discourse on Justice, while in the other you explain the Encyclical Letter that We issued not long ago concerning Christian Democracy. Each work is assuredly suited to the present time and most useful. Since, moreover, We are not unaware of the excellence of your talent and of the learning that you imbibed at Rome in the Gregorian University, We have no doubt at all that you have treated lucidly and correctly the subject that you undertook, one indeed commensurate with your powers. We therefore thank you for this dutiful service. And as a token of Our paternal benevolence and a pledge of divine gifts, We most lovingly in the Lord impart to you the apostolic benediction.

Given at Rome, at Saint Peter's, on the twentieth day of May in the year 1901, the twenty-fourth year of Our Pontificate.

LEO XIII, POPE

TO THE BELOVED SON

A. VERMEERSCH, S.J.

Louvain

I, **JOSEPH DE VOS**, Provincial Superior of the Society of Jesus in Belgium, by the authority granted to me for this purpose by the Very Reverend Father **LOUIS MARTIN**, Superior General of the same Society, grant permission for the work entitled *Questions on Justice for Present-Day Use, Scholastically Disputed, Second Edition, Enlarged and More Accurate*, composed by Father **ARTHUR VERMEERSCH**, a priest of the Society of Jesus, and duly examined and approved by the appointed censors, to be committed to the press.

In testimony whereof I have issued these letters, signed with my own hand and fortified with my seal.

Brussels, 7 July 1904.

J. De Vos, S.J.

Imprimatur

Bruges, 30 July 1904.

+ **G. I., Bishop of Bruges**

Bishopric of Bruges

Bruges, 12 December 1900.

Very Reverend Father,

The man whom you sought as censor of the book *On Justice* that you were to publish has, and not without reason, become its approver. It is indeed an excellent work, both for its abundance of doctrine and its singular wisdom in judging matters, and for the timeliness of the subjects set forth.

What especially, unless I am mistaken, will please learned men is this: that, leaving behind the too well-worn path of compendia, you have brought the matters back to the balance in such a way as to provide for the advancement of moral science worthy of the name; and at the same time, something most desirable in our age, by illuminating the understanding of the matters, you have effectively contributed aid toward the concord of minds that, as I hope, is now altogether to be perfected.

It has afforded me no less pleasure that you have so happily accomplished the greater part of a plan of mine, which I had conceived in my mind but which perhaps I would not be permitted to carry out for several years:

namely, that I should revise anew the book that I published fifteen years ago on the same subject of right and justice, adding solutions of questions recently raised.

Accordingly, Very Reverend Father, I heartily congratulate you on the excellent work, and I pray to the Lord for every blessing for you.

+ **G. I., Bishop of Bruges**

Preface

Concerning this new edition of our work, it will be enough to state that, although it had to be completed within a short space of time, it comes forth not only more carefully corrected, but also enriched with more explanations and arguments. Indeed, two questions have been added, both difficult and much disputed today, so that, more and more according to our powers, we might attain our purpose of explaining present controversies.

Now, to explain the plan of the book itself, we shall give substantially what we set forth by way of preface when we first wrote the work.

The proximate General Congregation of the Society of Jesus furnished the first occasion for writing, when by its Decree XXIV it ordered that, in our discipline, those questions "which contain the principles of moral science" be expounded scholastically. The times and the circumstances of public affairs then suggested that we should begin with justice, although, according to rational philosophy, that particular class of subject ought to yield its place to more general matters.

Accordingly, in this volume we do not embrace everything with which works *On Right and Justice* customarily deal, but only those matters that we judged would prepare an approach to particular answers, or would be especially pertinent to present-day controversies.

With this selection made, the result, in sum, is that the matters are fewer in number, yet it is possible to make the exposition of each more copious and abundant.

Moreover, we approached the treatment of the subject with this design: that in our discourse we should pursue not only what was approved by us, but also what was pleasing to others; and that, without in the least concealing the difficulty of the matters, we should weigh their reasons most diligently according to their proper weight.

But because a false understanding or an excessively slight consideration of beginnings is wont to be a common source of error and of disputing endlessly but fruitlessly, we sought for our conclusions the most secure protection of the highest principles. In investigating these, labor somewhat toilsome and disagreeable must be expended, yet it at the same time refreshes the mind of the inquirer with the joyful hope of fruits.

Concerning these highest principles, it pleased us to question the doctors of the preceding age and, above all, the Angelic Doctor, upon whose golden teachings our whole exposition rests. Nevertheless, we by no means neglected more recent authors, especially since the questions would have been poorly adapted to present-day use unless we had directed our attention to the errors of our age. It is pleasing here to profess openly how highly we esteem not a few men, learned in every branch of doctrine, who before us wrote *On Justice*, and to render them the thanks due for their assistance. Yet, that they might lead us more securely along the way of truth, we followed them only insofar as they seemed to carry the torch of reason before us. Accordingly, we devoted care to investigating their opinions; in approving them there was no flattery, and in departing from them there was no contempt or diminution of esteem, so that we employed the same authors by turns as patrons and as adversaries.

But if the authority of private men did not prevent us from holding intrinsic arguments in the first place of commendation and from freely disclosing our own opinion, every obstinacy had to be avoided out of the very pursuit of truth. Therefore, we could not stand by our own judgment to such a degree that we would set aside the oracles of that Church which God has given us as the infallible teacher of truth. For this reason we applied ourselves wholly to examining the pontifical documents; and it is superfluous to mention here that, as the subject demanded, chief regard was had for the Encyclical *Rerum Novarum*.

We have employed the scholastic method. Thus, after the notions have been explained, we prescribed a definite formula of the conclusion, or thesis, which we would confirm in the manner of the dialecticians, resolving, so far as we were able, the contrary arguments. A fuller exposition of the doctrine was then added in corollaries and scholia.

Finally, to provide for the convenience of readers, and by no means disdaining modern arts, we endeavored not only to accommodate the variety of typefaces and the form of the book to the diversity of the matters, but also to adorn this volume with several indexes.

May this work of ours, howsoever small it may be, redound to the increase of the virtue of Justice and contribute something to social peace, through the grace of the most just Prince of Peace, Christ Jesus, with the intercession of His Mother, the Immaculate Virgin, in whose most auspicious jubilee year it was written and completed.

Louvain, 31 July 1904.

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I. **STATE OF THE QUESTION:** Intention of the thesis; The terms are set forth, 224.

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I. **STATE OF THE QUESTION:** Timeliness, intention, and parts of the thesis; Opinions; The terms are explained, 231.

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II. **PROOF,** 259.

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Thesis XIX. By human law there can validly and suitably be introduced both the usucaption of a real right and prescription by which an obligation is truly extinguished. Nevertheless, *per se* it will be unlawful for a possessor or debtor in bad faith to enjoy the benefit of the law. Nor for that reason are laws to be judged unjust which, without regard to good or bad faith, extinguish an action after a definite time.

I. **STATE OF THE QUESTION:** Intention of the thesis; The terms are explained; Note on the thesis, 270.

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I. **STATE OF THE QUESTION:** Intention of the thesis; Opinions; The terms are explained, 292.
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Thesis XXI. True or internal consent, manifested by an external sign and mutual among the contracting parties, pertains to the essence of every agreement.

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Thesis XXII. *Per se*, every error truly giving cause to a contract invalidates the contract, but no fear, even grave fear, does so. In practice, however, a contract infected by a non-substantial error will often bind simply, on account of a tacit ratification or one imposed by nature itself; while an injury to be repaired or natural equity not rarely gives to one who has suffered fear the power of rescinding a stipulation made from fear.

I. **STATE OF THE QUESTION:** Intention of the thesis; The terms are explained, 310.
II. **PROOF:** Of the first part, 311; Of the other part, 312.
III. **DIFFICULTIES:** Concerning error; Concerning fear, 313.
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Thesis XXIII. It is essential to a contract that consent itself, insofar as it is the offerer's, but, more probably, not insofar as it is the acceptor's, be notified by the one to the other. Therefore, *per se*, an absolute obligation from a contract takes its beginning, in a unilateral agreement, from the external acceptance of the other party, but, in a bilateral agreement, from the notified consent of the counter-promisor.

I. **STATE OF THE QUESTION:** Intention of the thesis; Opinions; The terms are explained, 316.

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III. **DIFFICULTIES:** It is not required that the offerer's consent be notified; Notification of acceptance is required; The rules concerning the beginning of the obligation are false, 319.

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Thesis XXIV. Even over contracts, and generally over juridical acts, which have force by natural law, the authority of the civil power is *per se* so great that by just laws it is able to render them fully invalid, so that, before any sentence of a judge, they produce no obligation even in the internal forum. Nevertheless, these laws are of strict interpretation. Therefore, concerning present-day positive law, it must be answered that, as a rule, acts which are pronounced null are not deprived of their natural force before the sentence of a judge.

I. **STATE OF THE QUESTION:** Force and intention of the thesis; Opinions; The terms are explained, 326.

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Thesis XXV. The true value of things flows proximately from common estimation and cannot be adequately measured by human labor. By this value the just price of a thing is defined *per se*. Nevertheless, the seller can also stipulate compensation for the special deprivation that he sustains from the cession of the thing, on account of its use or his own affection for the thing, but not *per se* on account of the buyer's peculiar advantage.

I. STATE OF THE QUESTION: Importance and intention of the thesis; Opinions; The terms are explained, 342.

II. PROOF: Of the first part, 343; Of the second part, 344; Of the third part, 345.

III. DIFFICULTIES: Value cannot flow from common estimation; The just price is defined by the consent of the parties; A price of affection cannot be exacted; The special utility of the buyer seems capable of being reckoned, 346.

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Thesis XXVI. Every profit sought from a loan taken reduplicatively is unjust. Nevertheless, under a certain condition of society it can be *per se* lawful for everyone to lend money at moderate interest. The former severity of the Church and her present-day indulgence are free from every fault.

I. STATE OF THE QUESTION: Intention of the thesis; Opinion; The terms are explained, 373.

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Thesis XXVII. The profit to be made from a business belongs *per se*, proportionally, both to him who contributes labor and to him who supplies capital. Nevertheless, the form of some partnership between the master of the undertaking and the workers, although *per se* more perfect and more consonant with the equal dignity of the human person, is not the only just form of contract; rather, a true letting of labor is also honorable in itself.

I. STATE OF THE QUESTION: Intention of the thesis; The terms are set forth; Opinions, 393.

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Thesis XXVIII. A just wage is the true price of labor considered in itself, to be defined from agreement and common estimation. A wage thus established is, from justice, neither to be diminished nor increased according to the varying fortune of the business. Nevertheless, it is lawful for the master of the business to agree with the workers upon a compensation less than the just amount, so that he may safeguard for himself a moderate recompense for capital and his own industry, but not so that he may seek pure profit for himself.

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II. Nevertheless, the confusion of the kinds of life, or the access of women to public affairs, are neither things to be desired *per se*, nor to be hoped for according to some law of progress, nor likely to profit women themselves in living well and happily.

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Question I: The Virtue of Justice and its Division

Outline of the Question

1. Importance of the question. This first question can seem rather contemplative and at the same time painstaking; but it is a threshold that must necessarily be crossed if you wish an approach to lie open for you into the inner parts of the house—that is, to the more definite questions which, from present controversies and difficulties, have become of such great importance that they have turned the minds of nearly all men toward themselves. Therefore we earnestly exhort the benevolent Reader to survey this vestibule with the greatest attention, so that the rationale of the entire edifice may become plainer and more readily accessible to his mind.

2. Three matters, however, are to be treated in this place, which will furnish the subject of as many conclusions:

First, we shall **define** the virtue of justice;

Then we shall **divide** it into its parts;

Finally, we shall explain its **properties**.

3. A notion to be set down beforehand. But because justice is from right and for the sake of right, the notion of justice cannot be distinctly disclosed unless you have first attained the very rationale of right. We shall therefore devote our attention first of all to explaining this.

Introduction: The Right that is the Object of Justice

St. Thomas, *Summa Theologiae*, II–II, q. 57; Molina, *De iustitia et iure*, tr. 1, d. 2; Lessius, *De iustitia et iure*, c. 2; Cardinal de Lugo, *De iustitia et iure*, d. 1, s. 1; A. Van Gestel, *De iustitia et lege civili*, c. 1, § 2.

4. The various meanings of the word itself. *Ius* is used:

a) For the inviolable moral faculty with which a person is endowed. This is sometimes called the subjective acceptance¹ of the word;

¹ Nevertheless, it exists objectively no less than objective right; indeed, in its own manner, as we shall see, it assumes the character of an object. Hence the expression *subjective right* is criticized by R. P. Cathrein, S.J. (*Philosophia moralis*, no. 225). It has nevertheless been received, because this form of right inheres in our person.

b) For the object of that faculty, or for that which belongs to a person by reason of a right. Thus there is objective right;

c) For the rule of right, or law; indeed, for an entire system of laws: civil law, canon law, jurist;

d) For the very place where right is pronounced: to appear in court.

5. Right taken subjectively. Therefore, this first meaning of right, which must be explained accurately, coheres with the notion of a person, so much so that a person is described by jurists as the subject of right, and is distinguished from things by the fact that he is a being endowed with rights.

This very notion is drawn from a higher notion, according to which, in moral science, *person* designates a being existing for itself: that is, a being which does not exist merely for the end or good of others, but which exists for its own good and to whose good many other things are ordered. That being cannot be considered or treated by other persons as a means subordinated to themselves, but stands beside them as an associate and participant in the same dignity. All are commanded to revere this equal dignity, so that it is unlawful for any cause to destroy or disturb the ordering of a person toward his own good or end.

And this is the moral inviolability of a person; every rational supposit is such a person.

Every person, therefore, is inviolable insofar as he tends toward his end. But you cannot efficaciously pursue an end unless many means are at hand for you. Therefore, if the pursuit of the end is inviolable, it demands an inviolable faculty of effecting or obtaining that certain things be ordered to one's proper end as means of attaining that end.

Once this ordering has been made, the means themselves, legitimately ordered to the proper end, will participate in the inviolability of the person himself.

It can also be stated otherwise: a person possesses an inviolable power of ordering himself toward his end. Therefore, because he cannot accomplish this in practice without certain means, he can also inviolably order those means toward his proper end or good, either by executing this ordering or by exacting it. This inviolable faculty is honored with the name of right.

Therefore right, according to the common rationale of every right, is defined as **AN INVIOABLE MORAL FACULTY OF A PERSON**, and it is deservedly called a certain extension of personality.

Of a person: so that it may be distinguished from an inviolable moral faculty, if there is such a faculty, that rests upon another proximate title than personality.

Faculty: because it is possessed by the will by way of a potency, as a certain habitual power.

Moral: because, although consonant with the right order, it can nevertheless be impeded physically.

Inviolable: insofar as its observance is imposed upon all others and contempt for it is prohibited by divine law.

6. Right, a sign at once of nobility and of weakness. The fact that we possess rights properly so called reveals in us at once a certain innate nobility and a certain weakness.

Our nobility is made manifest from this, because on account of our rights we appear as the head of a certain order that ultimately conduces to our intrinsic good, while the character of a pure means in relation to other persons is wholly denied of us.

Yet a twofold weakness or imperfection is signified at the same time: a) A faculty whose violation is morally forbidden can be impeded physically; b) Rights have been attributed to the person on account of the person's need. As R. P. Cathrein observes very well,² right is the safeguard which we need so that, in the exercise of our liberty, we may be protected against the assaults of other men.

² *Philosophia moralis*, no. 225.

Therefore Almighty God, who is identically His own end and cannot be impeded by anyone, is eminently but not formally endowed with rights.

You will say: Are created persons themselves not ordered further toward God?

Reply. In truth, when a person is described as the subject of right, the person is compared with other created persons. No right belongs to us against God; but we have an infinitely firmer safeguard in His infinite goodness, which is diffusive of itself.

As regards the present doubt, we are indeed referred to God, yet in such a manner that no good thereby accrues to Him, but only external glory, while in Him we attain the supreme good and beatitude.

7. Right taken objectively, or those things in which subjective right terminates.

a) If right means the faculty of ordering certain things toward one's proper end, while a person is a being of such a kind that he cannot simply be ordered toward the good of others, it follows that the object of right is never a person as such.

Yet no innate dignity prevents things from being ordered entirely toward the good of some person. The bond by which things are bound to the person toward whose good they are ordered or referred is expressed by the possessive adjective *mine*, *yours*, and so forth.

Moreover, certain things appear from nature itself, or *per se*, to be connected with the good of some person—the operations of his members and faculties. These are already *per se* mine, yours, and so forth. Other things receive this connection from an accidental fact; such are external things.

Again, there is either some substance, which is strictly said to be had or possessed; or some action to be done freely by me; or, finally, some performance which I can exact from another.

Hence, from its object, right is now called an inviolable moral faculty of having certain things, of doing certain things, and of exacting certain things.

Thus far we have spoken of right insofar as it immediately affects things, taking this name in a broad sense.

b) But besides this immediate relation of certain things, in the broad sense, to some person, can there not be conceived—and does there not exist—another, a mediate relation, I say, through another person whose things they are immediately, and who through the things he has is referred in some measure to the former person?

To understand this, it is necessary to recall that, on account of the very perfection of men—so that they may be able to attain their end more efficaciously and fully and obtain that which Leo XIII calls “the perfect sufficiency of life”³—there exist, as a natural institution, civil society, and, as an institution of positive divine law, the Church.

³ Encyclical *Immortale Dei*.

Each of these societies or communities, therefore, truly exists for the sake of the persons of whom it is composed; immediately, however, for their sake taken commonly, not individually.

But a community does not really differ from the persons taken commonly.⁴ Therefore, just as it is said to exist for the sake of the persons taken commonly, society is equally well said to exist for its own sake. But if it exists for its own sake, it assumes the character of a person. In brief, the common good

incumbent upon it is the good of the society itself; and consequently, while it lives for that good, it lives for itself and is a being existing for itself.⁵

⁴ “For since the commonwealth is nothing other than the collection of all its parts.” Molina, I, 12, 3.

⁵ This understanding of the common good seems one that must be carefully maintained and urged, lest with the rationalists you imagine the good of some abstract Being to which physical persons would have to be sacrificed.

And thus, alongside physical persons, the community exists as a moral person.

Come, then; let us examine this moral person more closely. In relation to the persons of whom it consists, it is rightly held to stand as a whole to its parts,⁶ as a body to its members. But just as the human body cannot exist either simply or perfectly without a certain conformation and adaptation of its members both in themselves, in relation to other members, and in relation to the whole body, and without the concert of the members toward the good of the body, so that community, which exists and acts through its members, requires, for the sake of its existence or well-being, that the members stand in a certain manner both in themselves, in relation to other members, and in relation to the community itself; and that by their works suitably combined they strive together toward the common good.

⁶ II-II, q. 61, art. 1, corpus.

This suitable disposition of the members coheres with the existence and good of the whole body and is necessary for them. Therefore God, who physically disposed the members of the body, will morally provide to society this disposition and concert of its members. How? Through the faculty of exacting it. The community, therefore, just as it has the right of existing, has the right of exacting those things, or of converting to its own good certain things which, such as actions or things, belong to the persons of whom it consists. Therefore these persons, who as such exist for themselves, exist for the community as members or parts; and those things which belong immediately to them belong mediately to the community itself, as it were by the right of members.

But conversely, just as from their insertion into the body the members of the physical body, according to their position and dignity, participate in the life and goods of the body, so the action by which the community pursues the common good conduces *per se* and mediately to the good of individuals insofar as they bear a relation to that community.

It is evident, moreover, that the members of the community have a right that the common action should thus conduce, in a proportional share, to their good. For society itself, as we have seen, is among the means by which the most provident God has provided for the need of individual men, so that they may more easily tend toward their end. Society fulfills this function of a means insofar as the administration of the commonwealth conduces to the good of its members.⁷

⁷ Most aptly R. D. Pottier, *De Iure et Iustitia*, diss. 3, s. 1, c. 1, no. 20: “The end of society is not some external good existing *per se* and ontologically outside man, which comes to him because he is physically placed beside other men in a material aggregation; rather, it is to be procured by human operations mutually coordinated toward that end.”

In its own manner, therefore, the community exists for the sake of the members, and the things that belong immediately to the community belong mediately to the members. These things belong to the members by the right of their community. For “that which belongs to the whole belongs in some manner to the part.” II-II, q. 61, art. 1, ad 2.

8. THE THREEFOLD SPECIES OF RIGHT TAKEN OBJECTIVELY.

One who has carefully perceived what has been said thus far will at the same time have no doubt concerning these other matters, which are of great utility.

a) Besides things properly so called, which can be ordered entirely toward the good of some person, physical persons themselves, with their personal dignity preserved—and consequently not through themselves but through those things which are theirs (cf. 7 b)—are ordered as parts toward the good of the moral person to which they belong;⁸ this moral person, in turn, is ordered in a similar manner as a whole toward the good of the physical persons as members.

⁸ “The common good is the end of the individual persons existing in the community” (II–II, q. 58, art. 9, ad 3).

b) A private person, besides the things which he can call his own because they are ordered immediately toward his good, can also call his own the things—in the broad sense, and therefore labors and external goods—which belong immediately to the community.

The community, in turn, besides those things which belong immediately to it, can also call its own the things connected immediately with the good of the persons who are members of the community.

c) By that threefold *mine* or *his own*, just explained under letter b, there is signified a special ordering of certain things toward the end or good of some person; with respect to this ordering, that person has an inviolable moral faculty. It therefore designates the threefold object of a faculty of this kind, that is, of right.

Something, however, is not mine or his own according to the same rationale in the three cases. In other words, these three orderings, whose common rationale is the one just explained, are not of the same formal rationale, but are distinguished from one another by a specific difference.

All perceive this; and it can be explained more deeply in this manner.

a) At first sight it is already manifest that the first acceptance of *mine* or *his own* can be used as soon as, besides a thing capable of being ordered, there are other men by whom the ordering that has been made must be held sacred, or as soon as there is some human coexistence; while the second and third do not come into use unless certain persons are compared with one another as parts and a whole, that is, unless men are joined in a perfect society.

It is no less evident that the first and second acceptations apply to a private person, while the third is proper to the community.

β) But, what contributes more to the specific difference, in the second and third acceptations the connection of things with the person is mediate: it is introduced through the person to whom they belong immediately and previously.

Nor is the mediate connection formally the same in the second and third acceptations. For in the second it corresponds to the relation of the whole to the parts; in the third, to the relation of the parts to the whole.

γ) Hence it follows: 1) That when the immediate connection of the goods with the person to whom they belong ceases, the mediate right also ceases; 2) That the immediate right of the other person cannot be neglected by the one who has the mediate right, nor can those things be regarded as exclusively or primarily his own; 3) That the material quantity corresponding to the right is defined

differently for a different connection. For in the first case the thing is mine entirely, or in that quantity in which it is immediately connected with me. In the second and third cases, however, one must first observe what the immediate relation to the other person demands. Moreover, in the second case, attention must be given to the similar relation which the other members of the community have toward the whole. Hence, if certain things which belong to the community ought to become immediately the property of the members, the quantity for each one will be defined after you have first observed what must also be assigned to the other members. In brief, the citizens have a right that their good be procured by society equally, but for each according to his own place and condition. Finally, in the third case, one must first consider what the society needs for its existence or well-being; and then, if for that reason certain things belonging to the members must be made the property of the society, what each one must contribute according to his own part. Again in brief, the society has a right that it be served by the citizens equally, but according to the place and condition of each one. Therefore this quantity will be expressed not by an absolute number but by a proportional share.

d) From what has been said, it follows that right taken objectively is of three species, according to the threefold rationale of the debt which it satisfies. Nevertheless, it always corresponds to an inviolable moral faculty which safeguards personal dignity. Therefore it is referred univocally to the same genus.

9. Right taken as law. By a certain metonymy, the word *right* is transferred to law as to the very cause of right taken in the complete sense. For the moral inviolability which enters into the rationale of right implies a necessity imposed upon the will, or an obligation. This, however, is from law.

Moreover, this law is primarily divine law,⁹ which is nevertheless better called *fas* than *ius*;¹⁰ secondarily, it is human law, which has from divine law that it too is a secondary rule of morals.

⁹ Divine law is to be understood as natural law when civil society is in question; as both positive and natural law when the Church is in question. For from the positive will of God by which she exists as a perfect society, the Church possesses, besides the rights positively granted to her, all those which naturally belong to a perfect society. But at present we chiefly have civil society in view.

¹⁰ St. Thomas, II-II, q. 57, art. 1, ad 3.

10. You will ask about the order of reason between right taken as a faculty and law.

First of all is the eminent right of commanding which is proper to God. This is followed logically by the divine law or precept.

From that law there then flow the principal rights, or faculties, which belong to physical persons, and the very faculty of ordering toward the common good which the State or perfect society possesses. That faculty is exercised by human law, which is a secondary source of rights, or faculties, for persons, whether physical or moral.

11. What is to be held concerning right taken objectively?

It proceeds partly from God and partly from human law. For on account of each cause, not a few things are assigned to some person. In order that many other things may be attributed to a person, there is required, besides law, whether divine or human, an action of private persons: agreement, occupation.

But because, as we shall demonstrate, I acquire or preserve a right to no thing unless I in some manner use my faculty of acquiring or retaining it, right taken objectively, as such, always seems to us posterior to right taken subjectively.

To tell the truth, in this matter we are less pleased with the manner of speaking of those who, like R. P. Cathrein, establish the objective meaning of right as primary.

“From the fact,” he says in no. 226, “that something is owed to someone from justice,¹¹ there arises in him a moral faculty of acting or exacting.” For us, on the contrary, the objective acceptance of right derives from the subjective. Because I have a right, something is therefore owed to me. But I have a right because I am a person. Carrière puts it very well:¹² “Nothing is owed to another without a right in the other; hence right in the second manner, which is called formal right (legitimate power), is the foundation of the other right, which is called material or objective. Therefore something is owed to me insofar as I have a right to it.” In the same excellent work, the Reverend Father treats justice first (no. 142) and right afterward (no. 225), while we cannot conceive justice unless we have first attained the rationale of right.¹³

¹¹ Thus in the third edition. In the fourth, however, in place of “is owed from justice,” there is read “belongs as his own.”

¹² *De Iustitia et Iure*, no. 8.

¹³ To the point, Taparelli, *Saggio teoretico di diritto naturale*, no. 347: “From the idea of right there spontaneously arises the idea of social justice.”

We shall say briefly: Through law, both physical and moral persons are endowed with rights or inviolable faculties. The formal or virtual use of those faculties produces right taken objectively. Before every law is the supreme ordering faculty of God.

Chapter I: Definition of the Virtue of Justice

St. Thomas, II-II, q. 58

Article I. Justice Taken More Broadly

12. There is not one meaning of this word. For in a broader acceptance, it is used for rectitude, whether natural or even supernatural, according to which a man endowed with all the virtues is called upright and just. Not without reason: for by his conduct he conforms himself to the supreme norm of the will and, by most diligently obeying the divine law, shows himself most observant of the eminent divine right. In this meaning, every virtue is a certain part of justice, or a certain justice.

Many passages of the Scriptures which extol justice and the just are to be understood according to this more general and supernatural rationale. Thus St. Joseph is proclaimed just in the Gospel; and those who hunger and thirst for justice are called blessed (St. Matt. 5:6). In the same Evangelist, ch. 6, v. 1, the Lord properly understands mercy when He says: “Take heed that you do not your justice before men.”

For a reason not altogether dissimilar, a citizen, from perfectly observing the laws of his State, acquires for himself a certain civil or political justice of the external forum. For the internal perfection

that corresponds to the conscientious observance of civil duty must be ascribed to the most universal rationale of justice, by which a man is made upright and just before God, that is, in the internal forum.

In the present disputation, however, we describe the more proper meaning of this word.

Article II. Formulation and Arguments of the Proposition

THESIS I

Justice properly so called is a cardinal moral virtue, according to which “someone, with a constant and perpetual will, renders to each one his right” (II-II, q. 58, art. 1).

13. I. State of the Question. Since, as regards the matter itself, the doctors agree almost entirely about this definition, it will suffice to explain briefly each of its terms.

Justice properly so called: that is, the justice which corresponds to the rationale of those acts that are particularly called just.

It is a moral virtue. A moral virtue: a) Is opposed to a theological virtue, insofar as through the latter we are rightly ordered toward the supernatural end itself,¹ while through a moral virtue we are ordered toward those things that are for the sake of the end; b) Is more strictly opposed to an intellectual virtue. The latter perfects the intellect; a moral virtue, on the contrary, perfects the appetite. Moreover, this stricter sense is the present use of the word; and the appetite in which justice resides is the rational appetite, or the will.

¹ I-II, q. 62, art. 2; and compare what is said in the preceding volume.

Cardinal. This word is attributed: a) To the four conditions of rectitude that are predicated of every virtue. For every virtue must be prudent, just, brave, and temperate; b) To the four special virtues² in which, by reason of the matter about which they are concerned, one of these conditions shines forth in a singular manner. Hence these virtues become principal virtues, to which the others are logically referred as to so many heads. Cf. I-II, q. 61, arts. 1, 3, and 4, and the preceding volume of our questions.

² A virtue is called *special* when, because of its distinct essence, it is numbered with the other virtues and is not merely a common designation of all or many virtues.

Because this principality pertains to the matter, it is in no way necessary that a cardinal virtue be simply more eminent or excellent than the virtues subject to it. Thus justice yields in dignity to religion.

Because the division is logical, it happens that a virtue subordinated to a cardinal virtue is in another power and is no more intimately connected objectively with the cardinal virtue than with any other virtue. We shall give the example of humility, which resides in the will and is referred to temperance, whose subject is the sensible concupiscible appetite.

In this place we take *cardinal virtue* for a special virtue.

According to which someone: a person, I mean, whether physical or moral, who is bound by a duty.

With a constant and perpetual will. St. Thomas employs the former word subjectively, the latter objectively: so that the will is *constant* insofar as it firmly perseveres in the purpose of observing justice; *perpetual* insofar as it intends to render a right, not in some particular case or for a time, but perpetually and in all cases (art. 1, ad 3).

Will: an actual will,³ as though you were to say: according to which someone constantly and perpetually wills.

³ St. Thomas, here, ad 1.

His right: taken objectively, or that which, according to the inviolable faculty of another, is owed to him.

To each one: namely, to a person or subject of right, whether a physical person or a moral person, that is, a community.

Renders: either by positively procuring what is owed under the title of justice, or by negatively (yet voluntarily) abstaining from the violation of a right.

14. II. Proof.

N.B. Take care to observe that the proper signification of a word is to be drawn from common or ordinary usage, with a philosophical explanation added insofar as this is necessary. That is, ordinary usage supplies the elements which must be unfolded by a scientific method. We borrow these elements, as our conclusion concerning the division of justice will make manifest, from the best-known species of justice properly so called, namely, commutative justice.

The argument is arranged in parts.

1. a) Certain actions (the same holds for omissions) are everywhere declared to be adorned with this proper praise, that they have been done according to justice; so that the man who performs actions of this kind is therefore called just. In these actions, assuredly, there is found the proper rationale of justice.

Again, if you examine what these actions are, you will easily see that they are those which are necessary, or which must be done, because of a title inhering in another, and which does not demand any special relation of someone to the person who is obligated, but can be present in every man.

If, concerning these actions, you wish to give an account by a continuous series of questions and answers, one following another, the series will have to be arranged approximately thus:

Why is such an action morally good? — Because it is just;

Why is it just? — Because it is owed to Titius;

Why is it owed? — Because he has a right;

Why does he have a right? — Because he possesses this thing, because he is a man, because it has been assigned to him by contract, etc.

In agreement with these things are the sayings by which rendering what is just is presented as something that must be furnished to everyone and as, so to speak, the least part of those things that

must be done. Thus, for example, we are accustomed to say in French: *Justice is owed to everyone; it is only justice; it is surely the least one can do.*

But someone would not be said to possess justice who, as though by accident or only toward certain persons, satisfied this debt; rather, only he who so constantly renders a right to everyone that he reveals a permanent inclination within himself to act in this manner.

b) Thus far, ordinary usage. Now, however, as is evident from moral philosophy, that which is owed equally to everyone is the observance of their rights. Rights, however, are observed by rendering to each one his own right.

Therefore, justice properly so called is a habit by which someone, with a perpetual and constant will, renders to each one his right.

2. But this habit:

a) Does not permit abuse: no one uses it badly;

b) Rectifies our operations, and indeed those of the rational appetite:

Appetite. For although acts of the cognitive faculty, if they are true, are called just, the man himself is nevertheless not called just because he has judged true things.

Rational. For the proportion of one thing to another, which is considered in justice, exceeds the sensible faculty. This virtue pertains to the will and resides in it as in its subject.

Therefore justice is, in the strictest sense, a moral virtue.

3. Finally, it is a cardinal virtue. For:

a) That which belongs in some measure to all the virtues belongs more perfectly to this virtue, namely, to do what is owed. For the debt corresponding to a title inhering in another is a perfect debt; and justice discharges it adequately. The performance equals the debt in quantity. The other virtues, however, either render what is owed less strictly, as liberality and affability do; or do not equal the debt, as religion and piety do. For those things which we can furnish to God always fall below His merit. This also holds in some respect of a parent as the cause of our existence. Therefore, concerning the positive duties of justice, these or similar words are heard not infrequently: *I now owe you nothing*. But what well-born son would dare to blurt out anything of this kind concerning the obligation of piety and to declare himself released from every debt toward his father?

b) All the virtues by which we are ordered toward others are logically referred to that one which renders with exactness what is owed to others.⁴

⁴ For I owe another less strictly if the rationale of the debt is not the exigency of a title which the other possesses.

15. III. Difficulties may generally be compared in St. Thomas, II-II, q. 57, art. 1, and q. 58, art. 1. Most of them seem to have been sufficiently cut away by the very exposition of the notions.

1. Thus, if you object that justice is defined by St. Augustine, *De Moribus Ecclesiae*, ch. 25, as “love serving God alone,” it is sufficiently evident that he is treating charity, which is called the form of all the Christian virtues, inasmuch as it perfects them so that they are ways of arriving at the blessed life. He assigns to this informing charity the functions of the four cardinal virtues. But since to serve God alone⁵ is most of all owed to God, he rightly adorns this affection of charity with the name of

justice—justice toward God, as he himself observes in the same place, no. 44. But for that reason he does not deny that, among the parts of that justice toward God, or among the virtues informed by charity, there is justice among men, with which he is in no way dealing in that place.

⁵ Deut. 6:13; Matt. 6:24.

2. JUSTICE SEEMS TO BE AN INTELLECTUAL VIRTUE. For:

a) Justice orders us toward others. But to order belongs to reason. Therefore, etc.

R. I distinguish the major. It orders formally, I deny. It inclines us to will this order toward another which reason proposes; consequently, it inclines us to that will for which the formal ordering is found in reason itself, I concede.

b) Judgment (the sentence of a judge) is an act of justice, and yet of the intellect. Therefore.

R. It is an immediate or elicited act, I deny. It is a mediate or commanded act, or one which follows through the mediation of the will to render to each one his own, I concede. But only an immediate and elicited act specifies a virtue and reveals its subject.

Article III. Supplements to the Doctrine

COROLLARIES

16. Right taken as a faculty is rightly called the formal object *cui* of justice; for it is the reason why something is owed from justice.

The **formal object *quod***, on the contrary, is the rationale of a debt on account of a right. For under this rationale justice attains its matter, just as sight attains color and hearing sound.

17. The just thing which justice furnishes is rightly called an equal debt.

For in the rationale of the just, even when the term is employed in a signification other than a moral one, there is contained a certain equality which, because it is the equality of the measured to the measure, is in some manner owed. The just, therefore, is something equal. Here, however, the measure is the right of another; to that right there corresponds something strictly owed. The just, therefore, is at once equal to the right and owed.

18. Justice safeguards the personal equality of men. Further, rights, as we have seen, correspond to the personal dignity which inheres equally in all and safeguard this equal dignity of all. Therefore justice itself, which observes rights, must be said to safeguard the personal equality of men.

19. You will ask whether we understand an infused or an acquired virtue.

We answer that the discussion here concerns an acquired virtue, whose acts, nevertheless, will be performed in one manner by a believer and in another by an unbeliever. For the believer, if he is in the state of grace, will perform deliberate acts while stirred and aided by the actual and supernatural grace of God. Moreover, through an act of charity he has ordered himself toward God as toward his supernatural end, which, illumined by divine faith, he apprehends and believes: this ordering morally perseveres in the habit of charity; and, certainly for the most part, not to say always, when he acts deliberately, besides apprehending the immediate moral goodness of the present order, he will

confusedly apprehend and intend the supernatural goodness with which, instructed by faith, he knows the act to be endowed. In other words, an act of justice, when it is performed by a Christian who is a friend of God, will either be referred, together with the acting person himself, to the supernatural end, or will even ultimately be resolved into the motive of faith, insofar as it will be performed—at least if you seek its ultimate rationale—as acceptable to God, the author of the supernatural order, and as pertaining to that supernatural justice which could be participated in only by God’s beneficence and which was instituted by the positive and gratuitous will of God. (Cf., in the preceding volume, the thesis concerning merit.)

Chapter II: The Parts of the Virtue of Justice

St. Thomas, II–II, q. 58, arts. 6, 7; q. 79, art. 1; q. 80; Billuart, *De Iure et Iustitia*, diss. 5, art. 2; Molina, *De Iustitia et Iure*, treat. 1, disp. 1 and 12; Lessius, *De Iustitia et Iure*, ch. 1, dub. 3 and 4; C. de Lugo, *De Iustitia et Iure*, disp. 1, sects. 3 and 4; Pottier, *De Iure et Iustitia*, diss. 2; Van Gestel, *De Iustitia et Lege Civili*, ch. 1, §1.

Article I. Notions Concerning the Parts of Virtues

20. The subjective parts, quasi-potential parts, and quasi-integral parts of a virtue are distinguished.

The subjective parts are the species into which a virtue is divided as a certain genus. Now, the species must participate univocally in the generic rationale, and they must differ from one another by the difference which is called specific.

The potential parts of a virtue are virtues in which the proper rationale of that virtue is present in some manner, but deficiently.

The quasi-integral parts of a virtue are those things which must be had together in order that a perfect act of the virtue be constituted. That act is composed of them, almost as a body is composed of matter and form.

Article II. Formulation and Arguments of the Conclusion

THESIS II

There are three lowest species of justice properly so called: general or legal justice, and the two divisions of particular justice, commutative and distributive.

21. I. State of the Question. 1. WHAT THE CONCLUSION CONCERNS.

In the present proposition we inquire only about the species of justice, and we assert that there are three lowest species in number, or species which do not admit of further division.

We do not contend, however, that this division is immediate. Indeed, from the manner in which we have stated the thesis, it is sufficiently apparent that it is to be understood in such a way that justice is first divided into general and particular justice. The latter in turn, as a subalternate genus, contains two parts: commutative and distributive justice.

2. OPINIONS. We adhere to the opinion of St. Thomas. Today, however, not a few—for example, R. P. Cathrein, S.J.¹—attribute the rationale of justice properly so called only to commutative justice, which is sometimes called rigorous justice.

¹ *Philosophia Moralis*, no. 142.

There are also those who, following Schmalzgrueber, S.J.,² maintain that there is a fourth species, vindictory justice. This, moreover, is described as the virtue which seeks punishments from the guilty out of love for right order.

² *Ius Ecclesiasticum*, Preliminary Dissertation, no. 11.

3. THE TERMS ARE EXPLAINED.

Justice properly so called, such as we proved it to be in the preceding chapter.

There are three lowest species, so that no fourth is to be added:

General or legal justice. Because of the importance of the matter and the sufficiently remarkable confusion which is discovered on this point among several otherwise excellent doctors, its rationale will be explained more distinctly below. For the moment, let the following suffice:

This justice is described as *the virtue inclining the members of a community to render to their community what is owed to it as such*.

Moreover, this virtue is called *general*, not because it lacks a proper essence, but because, as we shall see, it orders the acts or matter of the other virtues as the common good requires.

And because it belongs to law to order the acts of citizens toward the common good, it is also called *legal justice*. Through it the citizen accords with the law.

And the two divisions of particular justice. That justice is called *particular* which is terminated formally, not at the community, but at any individual person whatsoever who is numbered with the others.

Materially, it can be the community itself, as, for example, in a purchase which the State makes.

Commutative justice is so called because it has place chiefly in exchanges, such as buying and selling. It governs the order of person to person as simply distinguished from and independent of another; and it concerns those things which, by each one's own right, are his own. Therefore it exists between private persons and is most commonly considered between them.

And distributive. This justice “distributes common advantages or burdens among the parts of the community” (C. de Lugo, disp. 1, no. 43).

22. II. Proof. There will not be a perfect demonstration unless we establish that the three parts which we assert exist as virtues distinct from one another, as lowest species, in which, nevertheless, the rationale of justice properly so called inheres, and that there is no fourth species.

We shall easily establish this, however, after those things which were related in the Introduction. For there we saw that right, or the just, is threefold in species, corresponding to the right of the community as such, to the right of a person as a part of the community, and to the right of a person simply so called. Hence thus:

Justice properly so called is the virtue which renders to each one his right.

Therefore. As many as are the species of rights to be rendered, or rationales of debt,³ so many distinct virtues are constituted as species of justice.

³ II-II, q. 61, art. 1, ad 5.

But. From those things which we disputed above, it is evident that right is threefold in species: that which is to be rendered by the members to the community; that which the community owes to the members; and that by which individual persons are bound one to another.

Therefore. There are three distinct virtues as species of justice properly so called.

These species, as is sufficiently evident from the notions handed down, are legal, distributive, and commutative justice.

Finally, those three virtues are lowest species. For there are no other persons besides individual persons and the community; nor can a fourth order be devised between persons taken simply as such. The same will, moreover, become more evident from the solutions to the difficulties.

III. Difficulties.

23. 1. LEGAL AND DISTRIBUTIVE JUSTICE ARE JUSTICE ONLY ANALOGICALLY.

For a) justice renders to each one his own. But both legal and distributive justice render from the own goods of the subject in which they inhere.

Reply. I distinguish. It renders the things which are his own: that is, those which belong to each one by his right, or which a person can exact by title of his personality, I concede; things which are his own as already made his property, I subdistinguish: the principal species, or commutative justice, I pass over; every species, I deny.

For that which strictly pertains to justice is to satisfy the right (faculty) of another. If the object of a right is something proper, that is, as they explain it, something already ordered toward the end of the one possessing the right, justice will render what is proper to him. But it was shown above in the Introduction that there are rights which are terminated at things other than one's own property.

b) The debt to be rendered, or the equality to be preserved, is, *in the very rationale of debt*, specifically diverse in legal and distributive justice and in commutative justice. Therefore. (R. D. Pottier, diss. 2, nos. 21, 30.)

Reply. I distinguish the antecedent. Yet in such a way that the three rationales of debt agree in one generic rationale of a debt founded upon the title of another,⁴ and therefore of a perfect debt, I concede; in such a way that there is no common generic rationale, I deny.

⁴ As regards that rationale, cf. Molina, disp. 12, no. 2; de Lugo, no. 50.

It is not sufficient, in order to establish that those three justices differ in their whole genus, to show the formal disparity of their object. For some formal disparity is required for a specific difference itself. But three virtues can be of the same genus as soon as some positive rationale univocally common to them can be assigned in the object. We consider ourselves to have accomplished this in the Introduction. Cf. nos. 5, 7, 8.

Likewise, although equality is understood differently in one justice and in another and, as we shall presently see, is called arithmetical in commutative justice but geometrical in distributive justice, it nevertheless does not enter the essence of justice as arithmetical or as distributive, but insofar as it is a true equality between the performance of a duty and a right.⁵ This form of equality is found in the three parts of justice.

⁵ “By bringing it about that the fulfillment of the duty corresponds exactly to the right.” Taparelli, no. 347.

c) In legal and distributive justice, perfect otherness is lacking.

Reply. I deny the assertion. Cf. ch. 3, where this otherness will be explained.

24. CONCERNING THE OPINION OF ST. THOMAS. We defend our opinion concerning this division with greater assurance because it alone seems to us to agree with the mind of the Holy Doctor. We are indeed not unaware that Cardinal de Lugo⁶ already thought that the words of St. Thomas could be qualified and that those parts which the Angelic Doctor calls subjective could be taken more broadly. But the question is not one of explaining a single word which may perhaps have fallen from his lips; rather, St. Thomas constantly uses those expressions and manners of speaking which are improper unless you assent to our proposition. For: **a)** He defines justice properly so called before treating the three justices, so that he establishes that definition as though common to the three; **b)** speaking of general justice he says thus: “Justice, therefore, can be related to both (to another considered individually and to another in common) according to its proper rationale”;⁷ **c)** again, in II-II, q. 58, art. 7, from objection 2 and the reply to 3, it is evident that he considers general and particular justice as two species of justice and is treating justice simply so called; **d)** as regards distributive and commutative justice, he speaks even more manifestly. In this sentence from the proemium of q. 61: “Next we must consider the parts of justice; first, the subjective parts, which are the species of justice, namely, distributive and commutative ...; third, the quasi-potential parts,” an argument can be drawn three times over, both from the words employed and from the comparison with the quasi-potential parts. Next, in article 1 alone, he employs the expression *species of justice* six times; and, in the reply to 5, he draws the specific distinction from the diversity of the debt. Finally, article 2, ad 2, contains this: “The general form of justice is equality, in which distributive justice agrees with commutative justice.” And since afterward he establishes as potential parts of justice virtues in which either the rationale of equality or the rationale of debt is deficient, does he not indirectly confirm yet again that both rationales are applied, not deficiently but properly, to general justice and to the two species of particular justice? But enough of this.⁸

⁶ Diss. 1, no. 50.

⁷ II-II, q. 58, art. 5, corpus.

⁸ Recently, departing from his former opinion, R. P. Cathrein, both in the elegant study *Die Cardinaltugend der Gerechtigkeit und ihr Verhältnis zur legalen Gerechtigkeit* [*The Cardinal Virtue of Justice and Its Relation to Legal Justice*], which was published in the Innsbruck periodical *Zeitschrift für katholische Theologie*, vol. 25 (1901), p. 635 ff., and in the fourth edition of *Philosophia Moralis*, now judges that, according to the mind of St. Thomas, the answer must be given in such a way that you posit as the cardinal virtue of justice, not some more general justice of which legal and particular justice would in some manner be species, but the one particular justice composed of commutative and distributive justice. We defer a definite pronouncement concerning this conclusion for the present, especially since what is chiefly important to ascertain is whether there truly is or is not some common rationale that is predicated univocally of the three justices. As to what R. P. Noldin thought in the same periodical, cf. vol. 26 (1902), p. 534, in his kindly judgment concerning our work.

25. 2. THE DIVISION HANDED DOWN SUFFERS FROM A DEFECT. For:

a) A fourth species must be enumerated: vindicatory justice, which demands punishments from the guilty. (Schmalzgrueber, Preliminary Dissertation, no. 11.);

b) Indeed, a fifth: domestic justice, which inclines one to procure the good of the family, just as legal justice inclines one to the common good of the civil State.

Reply. I deny the assertion. And to the proof:

a) Vindicatory justice is either the same as commutative or legal justice, or it falls short of the rationale of justice properly so called.

For it is considered chiefly in the prince or judge who determines punishments. But while they do this, they merely perform parts of the office by which they are bound to procure the good of the commonwealth. This, however, is an obligation of commutative justice. Therefore St. Thomas⁹ reduces vindicatory justice to commutative justice.

⁹ II-II, q. 80, sole article, ad 1.

In a private man who seeks compensation for himself, either immediately or through the mediation of a forensic action, vindicatory justice pertains to justice only reductively. For this man fulfills no duty of justice, since it remains entirely within his power to renounce this compensation. Rather, it is a special virtue which must strive chiefly for this: that someone seek the punishment of the guilty person with a right end and not beyond what is fitting.¹⁰ But it is quite evident that otherness is too much lacking here for this virtue to be established as a species of justice.

¹⁰ II-II, q. 108.

Finally, the guilty person who makes satisfaction exercises commutative or legal justice, according as by restitution he repairs the commutative justice which was violated, or pays the penalties as commanded by law.

With respect to the guilty person, however, there is no place for justice except insofar as he is not commanded to undergo penalties beyond what he merits. For it would be sufficiently strange to speak of punishment as in some manner owed to the guilty person himself by reason of some right of his.¹¹ "For the offender has no right to punishment; rather, the judge has the right to impose it" (Most Illustrious D. Waffelaert, *De Iustitia*, vol. 2, no. 402).

¹¹ Therefore we cannot approve the manner of speaking of R. D. Pottier, diss. 2, nos. 51 and 54.

You will say: What if you punish from love of right order as such? (Cf. R. P. Lehmkuhl, *Theologia Moralis*, vol. I, no. 753.)

Reply. To punish from love of right order belongs not to man but to God alone. Cf. II-II, q. 66, art. 6, ad 2.

N.B. Concerning this improperly named justice, besides St. Thomas, II-II, qq. 80 and 108, cf. Molina, treat. 1, disp. 12, no. 13; and treat. 11, disp. 715, no. 6; Most Illustrious D. Waffelaert, vol. 1, no. 16 at the end; vol. 2, nos. 396, 402.

b) **As regards domestic justice:** Since a family consists of few persons and the bond of domestic life is comprised in few relations, its good is sufficiently procured by observing the particular orders by

which the members of the family are connected with one another.

There is no need to introduce new obligations belonging to various virtues. Let the son obey his father as nature commands; let wife and husband furnish to one another those things to which they are bound by marriage; let master and servants each discharge his own office: and the order of domestic life will be perfect. But the rights of legal justice and the distinct virtue which fulfills this debt are founded upon the necessity of exacting in a perfect society many things which would not be required outside civil life. This will become more evident from what is to be said below. Cf. here St. Thomas, art. 7, ad 3; Most Illustrious D. Waffelaert, *De Iustitia*, vol. 2, no. 400; R. D. Pottier, diss. 3, no. 36.

Article III. Supplements to the Doctrine

I. COROLLARY

26. Concerning the division of the virtue of justice.

The cardinal virtue of justice is special, not as a lowest species, but as a genus containing under itself two species, general and particular justice, the latter of which is again divided into commutative and distributive justice. The specifying principle is the formally diverse terminus, from which the debt and the equality vary specifically.

In one case, however, together with a different terminus, there is also a different subject. For the subject of distributive justice is the community, while the subject of commutative justice is a private person, or one considered as though such: the community acts as a private person when it buys, sells, possesses gifts, etc.

II. SCHOLIA

27. You will ask about the quasi-integral parts of justice.

St. Thomas, II-II, q. 79, art. 1, establishes these two: *to do good* and *to turn away from evil*. The rationale of this statement can be given as follows. Although in virtues which are not toward another—for example, temperance—one can sin in two ways, by excess and by defect, there is nevertheless only one way of holding the mean or doing good: the fitting moderation of the appetite for food. On the contrary, justice tends toward a twofold good: not taking what belongs to another and positively rendering a debt. And he who does not take what belongs to another already performs an act of justice, just as does he who pays a debt; while he who does not eat cannot for that reason already be said to observe temperance. But through the negative duties of justice someone is said to turn away from evil; through the positive duties, to do good. Both are required in order that someone be simply and perfectly just. Yet while he does either one, he already constitutes a mean in the manner which is discerned in the other virtues. For while, for example, he pays a debt to Titius, he can sin by defect if he pays less than he owes, and by excess if he gives more from goods which he himself needs or which belong to another person.

As is evident from what has been said, these integral parts pertain not only to justice properly so called, but to all the virtues which, as virtues toward another, are referred to justice.

28. You will ask about the quasi-potential parts of justice.

From the notion handed down in article 1, it follows that in the virtues which come under the name of potential parts, there must be found a certain agreement with justice and at the same time a dissimilarity by which they fall short of the perfect rationale of justice. Come now: in the virtues which he annexes to justice, St. Thomas observes this agreement with justice, that they are terminated at others than the acting subject; but he finds a dissimilarity either in the debt or in the manner in which the debt is rendered.

Under the first heading, all the virtues which are toward another are annexed to justice.

Under the second and third headings, the following are judged to fall short of the perfect rationale of justice:

a) Virtues toward another which do not render a debt according to equality.

St. Thomas enumerates religion, piety, and observance.

b) Virtues toward another in which a defect of debt is found.

These are truthfulness, gratitude, and vindication, whose debt does not correspond to the right of another; and liberality, affability, friendship, and similar virtues, which contribute rather to greater moral goodness than possess a true necessity. Thus far St. Thomas, q. 80.

Chapter III: The Properties of Justice

St. Thomas, II-II, q. 58, arts. 2, 3, and throughout the question; Molina, op. cit., treat. 1, disp. 7, 8, 12; Lessius, op. cit., ch. 1; C. de Lugo, op. cit., disp. 1; Waffelaert, *De Iustitia*, vol. 1, no. 2; Cathrein, *Moralphilosophie*, pt. 1, bk. 4, II, §2.

Article I. Formulation and Arguments of the Proposition

THESIS III

To be toward another and to regard a debt are properties of justice.

29. I. State of the Question. 1. **THE INTENTION OF THE THESIS** is directed toward simultaneously declaring and demonstrating the principal properties of justice approved by the common judgment of the doctors. Understanding them will assist us not a little in grasping various consequences which bring the rationale of justice to greater perfection.

Moreover, our proposition affirms that these are two properties of justice; yet for that reason we have no intention whatever of separating other properties from it, but omit the inquiry into how many there appear to be.

2. THE TERMS ARE EXPLAINED.

Properties: that is, qualities flowing proximately from the essence, and consequently pertaining to every species of justice properly so called and not common to the other virtues;

Of justice: of justice properly so called, I mean;

Are: to be, terminatively—that is, when considering the subject to whom the performance is made, to whom the debt is rendered—**toward another**, taken as such, or reduplicatively; and by otherness we understand otherness of supposits;

And to regard a debt. In what manner this is a property of the virtue of justice must be explained briefly. For most virtues, not to say all, have necessary acts and consequently in some manner regard a debt. But although the other virtues observe a morally inviolable order, they nevertheless do not perform only those acts which are necessary in order that the order be preserved. For the moral goodness which they intend, or their formal object, is not circumscribed by the rationale of debt, nor does it rest upon it. In the order which they govern, a certain moral goodness shines forth, and to pursue it is always praiseworthy and virtuous, whether the act is imposed upon the will or leaves a free choice. Then, because some of these morally good acts are joined by a necessary bond with the end willed by God, those acts are commanded to us by God; but their primary moral goodness is not derived from the obligation itself.

On the contrary, it is the proper praise of justice that it does what is owed, so that, if every rationale of debt is removed, the very moral goodness which it intends is removed. “The good,” says St. Thomas, “under the rationale of a debt pertains properly to justice.” II–II, q. 79, art. 3, corpus.

30. II. Proof of the Thesis.

1. To be toward another and to regard a debt pertain to justice as two things which proximately follow the essence of justice.

Proof. The essence of justice consists in this, that it equals each one’s right. For equality is the general form of justice;¹ and the function of rendering a right is assigned to justice in the very definition of the first thesis.

¹ II–II, q. 61, art. 2, ad 2.

But. From the fact that justice renders a right, it is proximately brought about that it is toward another; from the fact that it renders a right according to equality, it is brought about that it furnishes that which is owed, neither more nor less.

Therefore. Proximately from the essence of justice, we have that it is toward another and regards a debt in the manner which has been stated.

The first part of the minor is proved. Because no one has rights in relation to his own person. For rights belong to a man as a safeguard of his personality against others, not against himself. Moral inviolability enters into the rationale of a right, and it is therefore sanctioned so that someone may freely tend toward his personal end. But to what purpose is moral inviolability in relation to oneself, since no one can be constrained by himself? You can indeed abstain from using your right, but you can in no way violate it.

The matter is evident, and its more profound rationale is this. A right is violated when it both perseveres and is impeded. But a right designates a certain faculty. Therefore, in order that someone might violate his own right, it would be necessary for him simultaneously to have and not to have the faculty, because he would be impeded by his own action. These things conflict with one another.

The other part of the minor is proved. The right or just thing which justice renders corresponds to right taken subjectively. But since right taken subjectively is an inviolable faculty, nothing corresponds to it except a performance that is owed. There is neither a right to that which is not owed, nor therefore can there be justice. Therefore, to render a right according to equality is to equal the debt by the performance, or to do that which is owed, neither more nor less.²

² R. P. Cathrein, op. cit., p. 271, aptly says: "If someone does not give all that he owes, he sins against justice; if he gives more than he owes, he no longer does it from justice, but from liberality."

Moreover, it has already been shown above, no. 17, that the just is an equal debt.

2. This otherness and this regard for debt do not pertain to the other virtues.

N.B. The comparison is instituted, not with the virtues which are referred to justice itself as potential parts—for these can participate in either property—but with the other virtues, whether principal virtues or those subordinated to principal virtues. Therefore it is in no way an obstacle that, for example, religion seems to be toward another; for it is annexed to justice.

It is proved. In order that a virtue be terminated at another reduplicatively, it must observe an order of which another is the necessary terminus; in order that it regard a debt, its object must borrow from its antecedent necessity all that moral goodness which the virtue intends.

But. Only the order which governs the coexistence of distinct persons (the juridical order in a broader acceptation) is necessarily terminated at another; and what moral goodness founded wholly upon an antecedent necessity can be indicated besides the moral goodness of furnishing that which someone's personality, or his rights, exacts? But the juridical order, resting upon the distinction of persons, is entirely committed to justice.

Therefore. No other virtue is terminated at another reduplicatively, nor does it incline toward only that which is owed.

The same thing can be shown *a posteriori* by considering how, in the three other cardinal virtues, the right is taken only by comparison with the agent.³ This is evident concerning fortitude and temperance, which moderate the passions. It is indeed true that among the actions governed by prudence there are many which are terminated at others, since the very acts of justice are commanded through it. But in the case of prudence, attention is given formally to the perfection which the intellect of the agent receives from right reason concerning things to be done, and not to the manner in which the commanded action is terminated at another.

³ II-II, q. 57, art. 1. Cf. q. 58, art. 9.

You will demonstrate with equal ease that the other virtues range beyond the limits of precept and in no way imitate justice, which attains its acts under the sole rationale of debt.

III. Difficulties.

31. 1. EVEN COMMUTATIVE JUSTICE IS NOT ALWAYS TOWARD ANOTHER. For:

a) Satisfaction for an injury is its compensation according to the equality of justice. But Christ made satisfaction to Himself. Therefore the equality of justice does not require otherness.

b) A guardian pays to himself those things which are owed to him by the ward according to strict justice. Therefore.

Reply. I deny the assertion. And to the argument:

To **a)** I concede the major. I distinguish the minor. Christ as God made satisfaction to Himself as God, or as man to man, I deny; as man He made satisfaction to Himself as God, I concede.

For although Christ is one person, His hypostasis is nevertheless composite insofar as, after the assumption of human nature, it was made the principle of subsisting for this nature, and thus subsists in two natures. Therefore, as regards the present consideration, the person of Christ must be established as virtually twofold. To say the same thing in other words: because in Christ there is a twofold principle by which the person is constituted a subject of right, a twofold moral person, a subject of right, can be conceived in Him according to the consideration of reason. Thus, approximately, Most Illustrious D. Waffelaert, vol. 1, no. 6.

To **b)** I distinguish the antecedent. The guardian pays to himself as representing the person of the ward, I concede; in his own name, I deny. Moreover, he does not merit the praise of justice insofar as he pays himself.

32. 2. IN TWO SPECIES, AT LEAST, OTHERNESS IS LACKING. For, through legal and distributive justice, the order between the community and its members is observed as between a whole and its parts. But between a whole and its parts there is an inadequate distinction. Therefore, through those virtues an order is observed which is not perfectly toward another; and consequently the virtues themselves are not perfectly toward another.

Reply. I deny the assertion. And to the argument:

I distinguish the major. Through legal and distributive justice, the order between the community and its members is observed as between a whole and parts, yet the whole differs from the parts in supposit and personal end, I concede; between a whole and parts among which that distinction does not obtain, I deny. I concede the minor. Between a whole and its parts there is an inadequate distinction which can be joined, as in the present case, with a disparity of supposit and personal end, I concede; a distinction which is repugnant to this disparity, I deny. But the otherness which is required and suffices is otherness of supposit and personal end. For the rationale of a right coheres with the rationale of a supposit. Cf. what was said at the beginning, no. 5, and what is to be said below, no. 38.

Indeed, if, as in a physical whole such as man, the whole and the parts belonged to one and the same supposit, there could be no order of justice between them. But now, since a society is a person distinct from the persons who are its members, there is sufficient otherness for an order of justice to be possible between them.

For it to be possible, I say; for not every order between those two termini is governed by justice, but only those orders in which one owes something to the other by reason of the exigency of his distinct personality.

And here it must be observed accurately which orders are ascribed to legal and distributive justice.

Indeed, no one will deny that it is morally good or fitting for a part to consult the good of the whole, and for the whole to provide for a part.

Are these, however, the moral goods which legal and distributive justice intend?

By no means. Orders of this kind would not belong to justice. But the common good, which is the personal end of society, exacts that certain things be done by the members; and the personal end of the members also exacts that they be assisted by society. Hence a twofold right; hence the order of each justice. For the things which either legal or distributive justice furnishes, they furnish as owed by reason of one or the other of these two rights, and therefore as owed to another person.

You will say: Nevertheless, those things which the members furnish to the community redound mediately to their own good, and thus at length otherness sometimes fails.

We answer that this reflection into one's own good is not always present. For what does he expect for himself from the common good that has been procured who, for the sake of that good, desires death, so that by the action through which he preserves the community he departs from that same community?

But if it is present at some time, we shall concede that the duty does not belong to legal justice except insofar as it mediately profits the other members, who are persons plainly distinct. Legal justice, as St. Thomas says,⁴ is "toward another in common, namely, insofar as he who serves some community serves all the men who are contained under that community."

⁴ II-II, q. 58, art. 5.

And because one man in comparison with so great a multitude is morally as nothing, that reflection into one's own good—which is not always present—can safely be neglected and disregarded.

33. 3. OTHERNESS IS NOT A PROPERTY OF JUSTICE. For charity itself orders us toward others, since many things must be done for one's neighbor from charity.

Reply. Charity itself orders us only toward others, I deny; for a man's charity toward himself is prior. It orders us also toward others, I subdistinguish: insofar as they are in some manner one with us in nature and in the vocation to supernatural beatitude, I concede; insofar as they are contradistinguished and independent persons, I deny. But otherness pertains to justice insofar as justice is not of a man toward himself but toward others reduplicatively as such.

34. 4. JUSTICE DOES NOT ALWAYS REGARD A DEBT. For he who, for the sake of security, pays a debt which probably does not exist exercises justice, even though objectively he is bound by no obligation.

Reply. I distinguish. He exercises justice either effectively or affectively, I concede; always effectively, I deny. Because he is moved by the intention of fulfilling whatever he may perhaps owe to the right of another, he merits the praise of justice through his affection; but if, on the part of the thing, he pays more than he owes, his external act does not belong to justice, any more than if through error he were to remain below the debt.

Article II. Supplements to the Doctrine

I. COROLLARIES

35. Justice is concerned with operations. Justice, especially particular justice, immediately rectifies, not passions, but operations,¹ and chiefly indeed external operations and the use of external things.² For because it is toward another, it immediately rectifies those acts which are terminated at

another. These are generally comprised in external operations and the use of external things; and they are in no way the interior affections and passions through which a man is immediately well disposed in himself.

¹ *Operation*, which word is taken broadly for an act of any faculty, is strictly reserved for an act which of itself does not include bodily change. It is then opposed to passion (I–II, q. 22, art. 1). Operations are called external insofar as they are terminated outwardly, chiefly through transient actions by which we either act externally or use external things.

² Therefore, according to St. Thomas, II–II, q. 60, art. 3, ad 3, internal judgments pertain to justice only indirectly.

Immediately, I say. For insofar as movements of the passions are not infrequently the principles of operations by which justice would be injured, this virtue not infrequently commands the moderation of anger or of another passion.

What we have added—namely, that this is especially true of particular justice—is nevertheless not strictly proper to it. For since a good disposition of a part can be referred to the good of the whole, legal justice can exact acts of temperance and fortitude, at least external acts. Thus, for example, the law punishes public drunkenness.

36. Because justice is toward another and rectifies external operations, it is said to have a mean of the thing.

In acts of a non-theological virtue, someone can depart from the rule by excess and by defect. Hence the good toward which the moral virtues tend has the rationale of a mean. That mean can always be denominated, in some sense, a mean of reason, since reason knows and dictates what it is to be conformed to the rule. But in constituting that mean, if reason attends to the conditions of the acting person, the mean of the virtue is said to be only a mean of reason. But if it determines the mean by comparing thing with thing, or a thing with a person other than the acting subject, so that the individuating characteristics of the latter can be disregarded, the mean is called a mean of the thing.

Now, the equality of justice, which is its mean, is not constituted through comparison with the agent, since the rights of others are the “formal object *cui*” of justice. But that equality is introduced into the use of external things and external operations, or into something not intrinsic to the acting subject, which can be designated by the name *thing*. Therefore, it has a mean of the thing.

This is illustrated by an easy example. By the same quantity of food or drink, Titius will sin against temperance while Gaius will observe it; indeed, the same Titius, according to a state of health or sickness, will at one time sin and at another act according to virtue. But whether I am rich or poor, in a purchase there must always be paid, *per se*, as much as the thing which I buy is worth. Cf. II–II, q. 58, art. 10, and also I–II, q. 60, art. 2, and Molina, treat. 1, disp. 2, no. 5, who demonstrates the same thing by an example pertaining to fortitude.

37. The just is predicated absolutely. Because the mean of justice is a mean of the thing, actions and even external things are said absolutely to be just or unjust, without comparison with the acting person or his intention, although, if the intention is set aside, an action is only materially just. But something is not said absolutely to be temperate or not. (Cf. II–II, q. 59, art. 2, ad 3.)

II. SCHOLIA

38. The otherness proper to justice is otherness of supposit or personal end. That is, those things which must be rendered from justice properly so called belong to someone insofar as he is a distinct supposit and insofar as he pursues his personal good. For they belong to him insofar as he has rights. But a (rational) supposit is the subject of a right; and rights exist as means of pursuing a personal end. (Cf. II-II, q. 58, art. 2.)

39. Between father and son as such there is no order of justice properly so called. For when they are taken as such, the son in his origin is considered as something of the father; and the things which belong to the father are ordered toward the personal good of the son. Although they are physically distinct persons, morally they are then one person, one subject of right.³ Therefore the right of paternal authority, because it must be exercised for the good of the son, is strictly a right with respect to outsiders, but not with respect to the son. Therefore, although an outside person, by taking the son away from the father, would sin against justice, the son who refuses the duty of obedience does not violate strict justice.

³ Most Illustrious D. Waffelaert, vol. 1, no. 6; vol. 2, no. 398.

The remaining duties of piety by which the son is bound toward the father, such as furnishing sustenance, are not juridical; that is, they are owed from moral goodness, but correspond to no exigency of the father's personality, or do not render that which is the father's by personal title. Cf. C. de Lugo, disp. 1, no. 8.

On the contrary, a son who, against his father's will, takes from him certain riches possessed by the father sins against strict justice. With respect to those goods, they are two persons. Cf. II-II, q. 57, art. 4.

40. In disp. 1, no. 26, C. de Lugo subtly inquires whether you can, from justice, pay the same debt twice, or pay a debt already extinguished. See him in the cited place.

Question II: Legal and Distributive Justice

Outline of the Question

41. Timeliness of the question. In order that the various present controversies concerning taxes, the just wage of a worker, etc., may be defined more accurately, it is necessary that we acquire a distinct notion of the two parts of justice which are called legal and distributive. Yet the more expedient and necessary the investigation is, the easier it does not thereby become, especially since the doctors of the first rank who flourished in the sixteenth and seventeenth centuries merely touched upon this matter, as could have been sufficient at that time. Hence confused notions are found among them; indeed, to disclose our mind sincerely, a not entirely genuine understanding of the Philosopher and St. Thomas. Nevertheless, their great authority has furnished not a few writers of our age an occasion for error, which gives rise to no slight inconvenience in present-day questions.

42. Rationale of the order. Desiring to provide as much as possible for clarity, we shall arrange this question so that we treat legal and distributive justice in two distinct chapters. And in the former chapter, we shall recount the various opinions before undertaking to defend our own position. Once this has been proved, it will then be possible to refute briefly the opinions which seem to us to depart from the truth.

Chapter I: Legal Justice

St. Thomas, II-II, q. 58, arts. 5, 6, compared with arts. 8 and 11; Molina, op. cit., treat. 1, disp. 1; Suárez, *De Legibus*, bk. 3, chs. 11, 12; Lessius, op. cit., ch. 1; C. de Lugo, op. cit., disp. 1; Van Gestel, op. cit., ch. 1; Pottier, *De Iure et Iustitia*, diss. 3, sect. 1, from ch. 2 onward.

Article I. The Various Opinions Are Set Forth

43. 1. ST. THOMAS, who on this matter agrees with the Philosopher, teaches that legal justice is a general virtue which is not divided alongside the other virtues in the manner in which piety, fortitude, and temperance are,¹ since it has as its material object the good or the acts of the other virtues; although it does not lack a special essence, because it further orders that good of the other virtues toward the common good,² commanding their acts as owed to the community.

¹ Art. 5, ad 1.

² Art. 6, corpus.

This is the position which we shall defend in this chapter.

2. Several hold that legal justice merely signifies the aggregate of all the virtues, so that they deny it a special essence.

3. According to MOLINA, legal justice is justice taken broadly, adorned with the name of justice because it produces equality with the laws. Its formal rationale, accompanying the acts of all the virtues, would be found in every act of virtue which is exercised for the common good. The act of

legal justice would therefore be “the act of any virtue whatsoever, not insofar as it is such, but insofar as it is ordered toward the common good of which the one who exercises it is a part.” (Cited place, no. 1. Cf. no. 5.)

4. **LESSIUS** remains rather uncertain. Nevertheless, he is more pleased with the view that legal justice is a special virtue which intends this special moral goodness of procuring the good of the commonwealth of which the agent is a citizen. As he judges, it is called justice because it regards another; nor is the opinion of those who think that it does not differ from piety improbable. Finally, he considers that the parts which Aristotle attributes to this justice agree most closely with the virtue of obedience. Cf. cited place, nos. 10, 11, 12, 14, 19.

5. **For Cardinal de Lugo**, legal justice is justice improperly so called, concerning which Aristotle held various opinions, but which in reality inclines one to procure the common good of the commonwealth “because of the peculiar conjunction which the agent has with the commonwealth.” Therefore, he agrees sufficiently with Lessius. Cf. C. de Lugo, cited place, nos. 62, 64, 68.

6. **Among more recent authors**, very many—for example, R. P. Cathrein³—embrace Cardinal de Lugo’s opinion. Some, such as R. P. Buceroni,⁴ reduce legal justice to the obedience by which the laws are obeyed. Nor do they consider themselves opposed to St. Thomas.

³ *Philosophia Moralis*, no. 141.

⁴ *Theologia Moralis, De Iustitia*, no. 4.

Finally, several seem to hold an opinion sufficiently similar to ours. Thus Most Illustrious D. Waffelaert,⁵ and, besides R. P. Van Gestel⁶ and R. D. Pottier,⁷ R. D. Marrès,⁸ who very briefly describes legal justice as that “by which its right is rendered to the commonwealth or civil State for procuring the common good of the citizens.” Carrière speaks ambiguously.

⁵ *Tractatus de Iustitia*, no. 4, note 20.

⁶ *De Iustitia et Lege Civili*, second edition, pp. 11, 12.

⁷ Cited place, nos. 68 and 86.

⁸ *De Iustitia*, no. 2.

Article II. Formulation and Arguments of the Conclusion

THESIS IV

General justice commands, as owed on account of the common good, those acts of the various virtues which are imposed upon citizens either by the positive law of the community or by their necessary connection with the common good.

44. **I. State of the Question.** 1. **THE END OF THE THESIS** is this: that through an accurate definition of the material and formal object, the very notion of legal justice may become manifest.

2. **THE TERMS ARE EXPLAINED.**

General justice commands. Acts which are the proper object of other virtues are said to pertain to some virtue by way of command when they are performed under the inclination of this prior virtue.

Yet it is not required for this that the act effectively proceed from two virtues, one of which would, as it were, issue a command to the other.

It seems worthwhile to define a little more accurately the notion of a commanding virtue and a commanded act. An act of some definite virtue—for example, mercy—to which you are drawn by a different motive can be taken merely materially, or formally as an act endowed with that definite moral goodness. If you perceive yourself to be moved to that act only in the former manner, you have not properly commanded an act of that virtue: both because there is no act of a virtue unless the execution of the material act is clothed through the intention with the proper moral goodness of the virtue as with a form, and because an act of this kind can proceed even from a vicious command, as if you were to pour out alms merely from vainglory. Therefore, in order that a certain virtue truly and properly command the act of another virtue, it must, from its own motive, will that act together with the form or goodness of the other virtue, insofar as this appears useful for its own end. Thus, in bringing aid and relief to a needy neighbor, if you are impelled by mercy alone, you will have performed an act of mercy; if, disregarding the consideration of his misery, you intend merely to foster the union by which your neighbor is joined to you in Christ, you will have exercised charity alone; finally, if you formally refer the very affection of mercy to the love of God, to whom mercy is acceptable, then at last you will have commanded an act of mercy from charity.

For this reason, no special matter is assigned to legal justice, and the acts of the other virtues are said to be commanded, because this justice considers the acts as formally good by various kinds of moral goodness and then inclines toward them as necessary for the common good of the civil State, that is, as owed by the right of the civil State.

As owed on account of the common good. By these words we express the formal object of this virtue. Moreover, by *owed* we understand acts which must be furnished on account of the community's own right. Take care to observe that we do not say simply, "from the intention of the common good," a manner of speaking which is not free of ambiguity, but rather, "as owed on account of the common good," so that the process is this: the exigency of the common good gives the community a right to which a debt corresponds. Legal justice inclines one to render this debt.

Acts of the various virtues. These acts, therefore, are the matter of legal justice. The words of *the various virtues* except no virtue. And indeed, according to St. Thomas,¹ justice can command the acts of all the virtues.

¹ II-II, q. 58, art. 5. Cf. also I-II, q. 96, art. 3.

Come now: by *acts* we understand both positive duties, or those which consist in doing something, and negative duties, or those which are fulfilled by a voluntary omission.

Which either. For not all acts pertain to legal justice, but only those which are contained in the two classes to be indicated presently.

By the positive law of the community. Under this name comes every law enacted for that community. It can be either divine positive law, such as the Jewish people had or the Church still has, or human law.

Or by their necessary connection with the common good. This is the other rationale by which certain acts enter the province of legal justice: if a manifest necessity of the common good demands

them. For this, there is required an evident necessity for which one can provide efficaciously without a law.

Are imposed upon citizens. By these words the description of the material object which legal justice regards is completed. It is always an act of some virtue, but one which either acquires necessity from law or possesses it of itself in relation to the common good.

45. II. Proof. 1. CONCERNING THE FORMAL OBJECT.

That formal rationale must be assigned to general justice which **a)** preserves for the virtue the common rationale of justice, and **b)** shows it to be a special justice. But a formal rationale of this kind is nothing other than the rationale of a debt on account of the common good. Therefore, general justice commands acts as owed on account of the common good.

The minor is proved. The common rationale of justice demands that the formal object be to render some right; the rationale of a special justice requires that it be a right specifically diverse from the right of commutative or distributive justice. But there is no right unless a debt corresponds to it; nor is there a special right unless it is founded upon that proper need of a moral person of this kind, namely, that its members procure its good. Therefore, the formal rationale is nothing other than the rationale of a debt on account of the common good.

46. 2. CONCERNING THE MATERIAL OBJECT.

a) It commands the acts of the various virtues. For the common good demands certain goods and a good disposition of man manifested in upright works: both in relation to God, in himself, and in relation to others, whether fellow citizens or the community itself insofar as it is a person joined to him, a parent, etc. (Cf. 7 b and 49.) But those good dispositions pertain to the various virtues, as is evident; and, from the terms recited, it is no less evident that no virtue is excluded.² Therefore, the acts by which they are manifested are acts of the various virtues, and indeed in such a way that none is excluded.

² St. Thomas shows the same by this rationale (II-II, q. 58, art. 5): "But a part, as to what it is, belongs to the whole; hence every good of a part can be ordered toward the good of the whole." Cf. I-II, q. 96, art. 3, with the notes of Cajetan; and Suárez, cited place, ch. 12, no. 7 ff.

b) Those acts are imposed upon citizens. For justice regards a debt. Cf. 30 and 32 at the end.

c) By the positive law of the community or by their necessary connection with the common good. For in order that sufficient provision be made for the good of that moral person which is the community, it is necessary that it be owed both that cooperation of the citizens which is manifestly required for the common good and that cooperation which society itself demands as conducive to that same common good.

But God, who established the right of the community, intends the efficacious procuring of the common good.

Therefore, acts are imposed upon citizens for this twofold rationale.

Most excellently, Most Illustrious D. Waffelaert:³ "That debt is according to a certain equality which must be measured by the necessity in which the commonwealth is placed.... Likewise it is called legal because it extends to all those things which have been established by law for the common good."

³ *De Iustitia*, vol. 1, no. 4, note 20.

47. III. Difficulty.

The will to procure the good of the commonwealth has a special moral goodness. But the virtue which intends this can only be legal justice. Therefore, the intention of the common good will be its formal object; and the material object will not be circumscribed solely by necessary acts. Cf. Lessius, ch. 1, no. 11, and R. D. Pottier, nos. 23, 27, 28.

Reply. I deny the major; that is, I deny that there is a special goodness in this will, which is assuredly excellent.

For this will, according to the variety of the good which it intends, will pertain to various virtues. In those who by reason of their office must care for the commonwealth, it will pertain to commutative justice; if you attend to your conjunction with the commonwealth, the will will belong to charity, under which every morally good love is comprehended; if you attend to the rationale of a principle which inheres in one's fatherland, recourse must be had to piety.

Therefore, only when a peculiar right of the community intervenes is there place for a special virtue.

But it is in no way established merely because that moral person is more worthy, because it is a community and not an individual man, that the virtues terminated at a moral person and those terminated at a physical person differ specifically from one another—unless you further teach that those persons stand as formally different termini, or, if you prefer, unless you show that the good which the virtue intends to furnish to the community pertains to the community in a different manner than to private persons. Thus, for example, he who steals a good possessed by the commonwealth will be said by no one to be guilty of an injury opposed to a commutative justice other than that which protects the goods of private persons. In like manner, he who loves his community exercises no new species of charity.

Moreover, the difficulty proposed would prove too much. For if the simple intention of a private or common good were to vary the virtues, and the latter intention constituted legal justice, then, just as the virtues which are terminated at individual persons differ specifically according to the good intended, so too would the virtues which regard the community differ; and as many species of legal justice would have to be distinguished as there are species of goods which can be procured for the community.

The unity of the virtue is finally preserved only if there is one sole rationale of the good. In the present case, that one rationale of the good is the equalization of the peculiar right with which the community is endowed. Cf. 8.

Article III. Supplements to the Doctrine

I. COROLLARIES

48. Defects of the other opinions. (Cf. art. 1.)

a) Molina takes the object of legal justice too broadly when he thinks that its rationale is found in every act which is exercised for the common good.

b) We refuted Lessius in the preceding number by answering his argument.

c) The characteristics which Cardinal de Lugo establishes for legal justice when he says that it inclines the citizen toward the common good of the commonwealth “because of the peculiar conjunction which the agent has with the commonwealth”—those characteristics, I say, **α**) cannot agree with justice for a twofold reason, since justice rests upon distinction, not conjunction, and regards a debt; **β**) nor are they to be attributed to a special virtue, since one charity observes the various orders of conjunctions.

d) Those more recent authors err who judge legal justice to be the same as obedience to the laws. For obedience, if taken formally, is moved by a different rationale, since it pursues the special moral goodness which shines forth in the conformity of the will with its rule; but if it is taken materially, it is concerned only with those things which are in some manner commanded.

e) No less are those mistaken who do not distinguish this legal justice from piety toward one’s fatherland. For piety observes in one’s fatherland the benefit of origin, and urges us less strictly in relation to our fatherland than in relation to our parents; while, on the contrary, we must disregard our parents in preference to the right which legal justice renders.

49. The generality and speciality of legal justice. Its generality is not one of essence, since that virtue has a proper form, but one of causality and matter, insofar as it commands the acts of all the virtues and assumes their matter for itself; charity also does this. But this latter virtue additionally possesses matter proper to itself: for there are acts which owe their immediate moral goodness to impelling charity; while legal justice derives its speciality from the formal rationale alone. For the formal rationale of this virtue is the moral goodness of rendering what is owed to the community as such. But that which is owed to the community as such is a certain good disposition of the agent, or an act of some virtue (cf. 7 b and 46), so that the moral goodness of legal justice appears to be mediate.

But if you ask about the elicited act of this virtue, we answer that it consists in the affection of rendering this debt.

It is helpful to receive a splendid confirmation of this from Gregory of Valencia:¹ “Human law constitutes an act in the species of a virtue, not in just any manner, but as necessary and owed, as it pertains to this or that virtue. For otherwise it is certain that an act, in order to be apt matter for human law, must be morally good from its genus or from its circumstances, and accordingly of such a kind as to pertain to some species of virtue, just as every good act must pertain to one. For if it were of itself either evil or indifferent or useless, a just law could not be enacted or established concerning it.”

¹ *In I-II*, disp. 7, q. 5, pt. 7, at the end.

50. The debt of legal justice is nothing other than a necessity—either then imposed for the first time, or imposed under a new title on account of the common good of society—of doing or omitting certain things which already pertained to some particular virtue.

For the first time, I say, if the act was previously a matter of free choice; *under a new title*, if the act was already prescribed by divine law on account of the good of the primary order, which is terminated at God.

Moreover, to impose in this manner the necessity of various acts is, in the fullest sense, to exercise jurisdiction. Indeed, the magistrate to whom disputes are brought does not exercise jurisdiction except because the parties are bound to observe his sentence as a right established for them.

And from this the true rationale of the power of jurisdiction comes to light; and it becomes apparent why acts commanded through this power are said to bind from the motive of the virtue which governs the order in which the command is given: so that a precept of fasting binds from Temperance, and a precept of hearing Mass binds from Religion. This in no way belongs to one commanding from dominative power.

But the virtues themselves, insofar as they are under the command of legal justice, sometimes receive the name of legal justice (St. Thomas, II-II, q. 58, art. 6).

II. SCHOLIA

51. Among more recent authors, mention is not infrequently made of social justice. By this expression they can signify a special virtue, which in that case can be no other than legal justice; or through it they can designate the aggregate of virtues which are employed in society. For just as universal rectitude in relation to God is adorned with the name of justice (cf. 12), so this civil rationale of rectitude, by which someone through various virtues conducts himself toward society as he ought (and therefore justly), is by no means unsuited to the name of justice.²

² Cf. R. D. Pottier, diss. 3, sect. 1, no. 33.

52. The subject of general justice. Because most of the duties of general justice, at least the positive duties, are defined by laws, that justice is said to be in the prince (the lawgiver) “principally and as it were architectonically.”³ For the functions of the one ordering are more excellent than the functions of those who execute the ordering. It is also apparent that, in the right disposition of affairs, the prince is more readily moved by the intention of rendering a debt to the community, so that he acquires for himself a special merit of general justice. Nevertheless—and this should be carefully noted—this prince, while in the manner of an architect he commands the plan of the social edifice, exercises commutative justice in addition to general justice. For by undertaking the office, he has obligated himself by strict justice to furnish those services.

³ II-II, q. 58, art. 6.

Therefore, the prince can in no way be considered the one to whom the debt of legal justice is rendered. The subject of the right is society; he is not the subject of the right but, like the other citizens, the subject of justice. Nor is that justice one thing in the prince and another in the subjects.

53. You will ask about the subject of the right, or the community in which general justice has place. And while Cardinal de Lugo, deceived by his own opinion, is compelled to imagine for various communities various special virtues which imitate the nature of legal justice,⁴ it is easily evident to us that legal justice is found only in a perfect society. In this alone is found the faculty of making laws and jurisdiction.

⁴ Cf. disp. 1, no. 66.

You will say: Nevertheless, lesser communities—for example, religious orders and municipalities—possess jurisdiction.

We answer that this jurisdiction is nothing other than a part of the jurisdiction which belongs to a perfect society and which is communicated by it to these lesser societies insofar as the interest of the commonwealth requires.

R. D. Pottier writes elegantly: “There is a twofold life whose perfect sufficiency must be procured through a community: eternal life or eternal happiness, which in the Church of Christ and through the Church of Christ must be procured, and temporal life or temporal happiness, duly subordinated to eternal life, which must be brought forth through the civil State and in the civil State. Other communities or particular societies do not regard or procure a common good specifically distinct from these two, but in some partial or particular manner assist in procuring the perfect sufficiency either of eternal life or of temporal life.”⁵

⁵ Op. cit., diss. 3, sect. 1, no. 34. The distinguished author appears less felicitous in the same number when he places private societies of merchants and municipalities in the same category. For communities which constitute a true moral body must be distinguished from those which are one thing by a mere fiction of law; communities in which jurisdiction inheres must be distinguished from those which entirely lack it.

54. Concerning the international rationale of general justice.

But you could, as though from the opposite side, ask whether general justice is contained within the boundaries of a perfect society, or whether that virtue is also incumbent upon one so that it may satisfy a debt of some international common good.

This question coheres with another of no less importance: whether or not a certain international society of nations is to be admitted, one resting not on mere compact,⁶ but deriving its origin from nature itself. For if there is a society of this kind, there will also be some common good whose exigency must be satisfied; there will therefore be a certain office of general justice.

⁶ In order to distinguish this conjunction from that which associates federated states.

Come now: if already in his own age Suárez,⁷ argued from the necessity of mutual aid and communication that a society of this kind existed among civil societies, by which they might obtain that which was lacking for the perfect sufficiency of each one, how much more today, with increased commerce among nations and with a certain unity of customs and culture having been introduced, it seems that assent must be given to this social conjunction. Nature, while producing mutual necessities, at the same time impels men to enter into society and efficaciously sanctions its constitution. Moreover, you will scarcely explain otherwise certain altogether particular points of international law which must be observed even in war, but concerning which no formal agreement has been made: for example, that the high sea is subject to the jurisdiction of no nation, while the nations bordering the sea possess a tract of three miles.

⁷ *De Legibus*, bk. 2, ch. 19, no. 9.

Nor, as R. P. Schiffini objects,⁸ must fear thereby be entertained for the liberty and autonomy of kingdoms, since that society and the jurisdiction which it consequently possesses are circumscribed by definite limits. Must not the civil State itself already observe as sacred the rights of domestic society?

⁸ *Philosophia Moralis*, no. 219.

As is evident, that society is of a perfectly democratic form, so that the making of law belongs to the whole multitude of nations; the members of which it is immediately composed are perfect societies; it is incomplete with respect to its object, and broader or narrower according to the number of goods which must be supplied in common. Therefore, it is not repugnant that several societies of this kind exist in number, and that a closer one be constituted among neighboring peoples while a more universal one embraces all civilized nations.

Taparelli discusses this argument at length.⁹ The same is approved by R. P. Van Gestel;¹⁰ nor does R. D. Pottier defend a dissimilar opinion.¹¹ Some confirmation is added from the condemned proposition LXII of the *Syllabus*: “The principle which they call non-intervention must be proclaimed and observed.”

⁹ *Saggio Teoretico*, nos. 1357–1403.

¹⁰ Op. cit., no. XLII.

¹¹ Op. cit., diss. 3, sect. 1, nos. 39–42.

Chapter II: Distributive Justice

St. Thomas, I–II, q. 60, art. 3; II–II, q. 61; Molina, op. cit., treat. 1, disp. 12; Sánchez, *Consilia Moralia*, bk. 2, ch. 1, doubt 36; Lessius, op. cit., ch. 1, dub. 4; ch. 32, dub. 2, 3; C. de Lugo, op. cit., disp. 1, sect. 3; disps. 34, 35; Waffelaert, op. cit., vol. 2, nos. 404–413; Van Gestel, op. cit., ch. 1, §1; Pottier, op. cit., diss. 2, sect. 2, ch. 4.

Article I. First Exposition of the Controversy

55. The function of distributive justice. To that special right by which the goods of the community pertain mediately to its members (cf. 8), there must correspond in the community—that is, in those who represent it—a care distinct from the procuring of the common good, by which they strive to make the citizens participate in the common advantages, not in just any manner, but so that from the common goods his own may be rendered to each one: his own, I say, according to that peculiar rationale by which the things belonging to the community are referred to the parts of the community. And this care is entrusted to distributive justice.

56. To whom this province belongs. Moreover, this care of distributing common things belongs properly to those who act for the community, who are placed over the administration of the commonwealth—in a word, who hold the supreme powers of government. Nevertheless, they can delegate this function to others, which can be done in a twofold manner. For sometimes the delegate properly sustains the person of the distributor. We have examples in royal ministers to whom each year, among the expenditures foreseen (the budget) and approved by the legislator, certain sums are committed to be expended for a definite end, yet in such a way that the entire administration of the affair belongs to them. The ministers are then bound toward the commonwealth by an obligation of commutative justice to apply that money to the proposed end—for example, to fostering the arts and sciences; but the manner in which they do this through prizes, etc., is left to their judgment, so that cultivators of the arts can demand something from them only under the title of distributive justice.

Not infrequently, however, the very manner of making the distribution is so defined by those who govern that, once the definition has been made, only its execution is entrusted to the officials; while the members whose interest is involved can each claim for himself his proportionate part from commutative justice. This obtains in the judicial forum. No one doubts that a judge has violated commutative justice toward a party whose cause he has either simply refused to hear or has delayed excessively in hearing. What is the reason for this? Because it indeed belongs to the law or the Prince to provide from distributive justice that access to the forum be open to every citizen; but once the forum has been constituted, every citizen has a strict right to bring his cause before the competent tribunal.

57. Object of the disputation. After we have shown the specific difference between distributive justice and the other species of justice, we can now describe its formal rationale with a light pen. But two other, more difficult questions remain which are not without their own importance. One concerns the material object of this justice; the other, the rules of just distribution.

58. Various opinions concerning the nature and matter of this justice. We shall take occasion from the former question to review what the most eminent doctors have thought concerning this justice.

St. Thomas seems to have remained doubtful concerning the nature of distributive justice and its distinction from commutative justice. Cf. I–II, q. 60, art. 3, ad 3. Later, however, in II–II, q. 61, he establishes it as justice in the proper sense, distinct from commutative justice because of a diverse rationale of debt: “For that which is common and that which is proper are owed to someone in different manners.” But concerning the object about which this justice is concerned, St. Thomas teaches that it is occupied principally with the distribution of goods,¹ although the distribution of burdens is not entirely foreign to it. Cf. *In V Ethicorum*, ch. 5, and II–II, q. 61, art. 3. Finally, this virtue takes its mean, not according to the equality of thing to thing, which pertains to commutative justice, but according to the proportion of things to persons. Cf. the same, art. 2. This last point pleases all who write about this justice.

¹ Cf. II–II, q. 61, art. 1.

For Molina, distributive justice concerns surplus goods to be distributed. Cf. treat. 1, disp. 12, nos. 3 and 8.

Lessius assigns to it the province of distributing common things, offices, and common burdens. Cf. ch. 1, no. 20 ff.

Cardinal de Lugo indeed admits that this justice is concerned with goods and common burdens to be distributed,² but excludes from it election to offices.³ According to him, this virtue is improperly called justice and “regards the moral goodness of distribution with the proportion owed among subjects” (disp. 1, nos. 50, 61).

² Cf. disp. 1, no. 43.

³ Cf. disp. 34, no. 19. In this matter he thinks to refute Sánchez, who in the work *Consilia Moralia*, bk. 2, ch. 1, doubt 36, treats extensively of the obligation of observing distributive justice in the conferral of offices and public functions.

More recent authors agree sufficiently that it is justice less properly so called, which is concerned with common goods and burdens to be distributed, so that offices themselves are generally judged to

be comprehended among the goods to be distributed. Cf. Carrière, *De Iustitia et Iure*, no. 7; and especially Most Illustrious D. Waffelaert, who, from no. 404 onward, treats at length of the conferral of offices. R. P. Van Gestel, op. cit., pp. 14, 16, thought that he would answer more according to the mind of St. Thomas if he assigned to distributive justice only the equitable division of goods and public honors.

59. Opinions concerning the rules of just distribution. If you attend to it for a moment, the question concerning the rules to be observed by the distributor appears to be composed of two parts. For in order to distribute rightly, it is first necessary to know what title, quality, or condition is to be considered in the citizens; and then, according to the measure in which he possesses the title, each one is to obtain a greater or lesser part.

This becomes manifest from any example. Suppose, for example, that it is a question of the office of notary which you wish to confer upon Titius. It was first necessary to define in general who could compete for such an office, and then from among those who satisfy the conditions Titius must be chosen by you. Similarly, when subsidies from the treasury are assigned to mutual-aid societies, these two things had to be deliberated: why you grant subsidies to these societies rather than to others, and how much is to be expended for this end; and how you are to divide the sum equally among those societies.

Moreover, the latter part admits of a sufficiently easy solution: with respect to the title which is to be considered, the citizens are to be treated equally, “so that, if there are two of whom one has merits as four and the other as eight, the latter exceeds the former twofold in the distribution.”⁴

⁴ Cardinal de Lugo, disp. 1, no. 45.

Concerning the former part, however, St. Thomas, II-II, q. 61, art. 2, has these few words: “In distributive justice, something is given to a private person insofar as that which belongs to the whole is owed to the part. This is indeed greater in proportion as the part itself has greater principality in the whole. And therefore, in distributive justice, so much more of the common goods is given to someone as that person has greater principality in the community. This principality is considered according to virtue in an aristocratic community, according to wealth in an oligarchy, according to liberty in a democracy, and otherwise in other communities.”

But those who, after St. Thomas, were eminent among the Scholastics do not seem to have touched upon this principal and more difficult part.

From more recent controversies, a twofold opinion is gathered.

Very many, relying upon the words of the Angelic Doctor, “so much more is given to someone ... as he has greater principality in the community,” establish a universal rule: that common goods are to be divided according to merit toward the commonwealth or according to dignity; nor do they seem averse to this interpretation, according to which a greater part of the common goods would have to be given to the higher classes than to the lower.

Recently, however, in the distinguished study *Il concetto cristiano della democrazia* [*The Christian Concept of Democracy*], the distinguished Professor Toniolo proposes a plainly different rule, according to which, in the right order of society, burdens would have to be distributed according to capacity, but goods according to incapacity or necessity.⁵

⁵ He states his opinion literally thus: “In this hierarchical social order, directed toward mutual protection and assistance in the assignment of the common good, he who can do more owes more; he who can do less receives more.”

Finally, mention must be made of the strange manner in which the socialists understand distributive justice. For they wish the possession of all productive property to be common, but the fruit of collective labor to fall to each one according to the work furnished, until progress in culture and morals should permit the more perfect rule by which each one would contribute according to his powers, but would receive according to his needs.⁶ Cf. the thesis concerning socialism.

⁶ “Our ideal ... is communism: from each according to his powers, to each according to his needs.... But meanwhile ... we say: to each according to his work.” Vandervelde, *Le Socialisme en Belgique*, pt. 2, II, §3 (pp. 300–301, ed. 1898).

It remains now for us, having assumed a position, to disclose distinctly our opinion concerning these points, yet modestly, as in a matter little explored.

Article II. Formulation and Arguments of the Conclusion

THESIS V

Distributive justice is directly concerned with common goods to be divided; with burdens, however, only indirectly.

By the proportion which it observes, it intends to equal the special right which the members claim for themselves in the goods of the community.

The quantity of this right must be measured primarily by the exigency of the common good, secondarily by the norm of equality.

60. I. State of the Question. 1. THE END OF THE THESIS is sufficiently shown of itself to be threefold: so that in the first part the material object of this justice is defined; in the second, its formal object; finally, in the third, the mode of measurement by which the formal object is to be estimated quantitatively—or, what comes to the same thing, what rules are to be observed in an equitable distribution.

2. THE TERMS ARE EXPLAINED.

Distributive justice is directly concerned with goods ... but with burdens only indirectly. Therefore, we defend a middle opinion, by which we do not indeed banish the distribution of burdens from the province of this justice, but nevertheless refer it to this province only indirectly. *Directly*, I say, that is, in itself, under this rationale of goods to be distributed; *indirectly*, that is, in another, insofar as an unequal distribution of burdens is reduced to an unequal division of goods.

Under the name of goods, moreover, we also embrace public offices. With how much right and merit we do so we shall not teach by arguing it distinctly, since it seems sufficient to us if in the corollary we show Cardinal de Lugo’s rationale to be vain.

With common goods to be divided. By this final word, we deny that the care concerning the manner in which citizens divide private possessions among themselves pertains to distributive justice.

By the proportion which it observes. By these words we describe the material function of this virtue: to maintain proportion in distributing.

It intends to equal, that is, to render according to equality.

The special right which the members claim for themselves in the goods of the community. You have this right outlined above, no. 8.

The quantity of this right, or what the just thing is.

Must be measured primarily by the exigency of the common good. Therefore, a just distributor must first consider what rationale of distribution conduces to the common utility.

Secondarily: that is, insofar as the prevailing rationale of the common good permits.

By the norm of equality. So that he is perpetually occupied with the endeavor of rendering the same to all, except insofar as the common good requires diversity. That is, so far as the end of society allows, the distributor strives to maintain equality among the citizens.

Moreover, we propose this position in modern societies, in which the citizens enjoy equal right, although it also retains its truth in aristocratic societies. For in these societies distributive justice then has regard to those inequalities which exist by a legitimate fact; and, while it considers no inequality beyond these, it can again be said to tend toward equality.

II. Proof.

61. A. OF THE FIRST PART. 1. Distributive justice is directly concerned only with common goods to be distributed.

It pertains directly to justice to render to another, but not to exact for oneself.

But in the distribution of goods alone is something rendered to another. For he who distributes burdens defines what must be furnished to himself or to the community.

Therefore, distributive justice, which, insofar as it is distributive, is concerned with distribution, cannot, insofar as it is justice, be concerned directly except with goods.

That the discussion concerns only common goods is already evident from the fact that this justice resides solely in the community, since it alone is referred to the members as a whole to its parts. But a community which undertook to distribute things other than common things would violate private rights of ownership.

2. Nevertheless, it is concerned indirectly with burdens.¹

¹ Cardinal de Lugo treats the same argument, disp. 1, nos. 56, 58; and although we consider his explanation insufficient, he nevertheless brings forward several things plainly worthy of consideration. For example, at the end of no. 56, he explains the difficulty excellently.

For **a)** to be free from a burden has the rationale of a good—indeed, a negative one, but one which is very often valued most highly; **b)** just as the goods of someone's patrimony are not understood except after debt, or obligations, has been subtracted, so the sum of the goods which someone enjoys in society must be compared with the burdens annexed to them.

Therefore, distributive justice is concerned with burdens insofar as, by imposing upon each one only that which it is just for him to bear, it does not diminish his goods beyond what is equitable and in this manner preserves for him a proportionate part of the common advantages; in other words, insofar as the distribution of burdens reduces to a certain division of goods.

62. B. OF THE SECOND PART. 1. By the proportion which it observes, distributive justice intends to equal a right.

For to render a right, and indeed according to equality, is the generic formal rationale of justice properly so called (no. 29).

2. That right is the special right which the members claim for themselves in the goods of the community.

For a special right is needed in order that there be a special rationale of debt. But a special rationale of debt alone can introduce a new species of justice, since justice regards a debt (cf. no. 29).

Therefore, a special right to be rendered is needed in order that distributive justice be a distinct species of justice. But it is evident that the special right presently in question is that by which the community is bound toward the members as its parts.

63. C. OF THE THIRD PART, which concerns the norm to which a just distribution must conform, especially in a society where the citizens enjoy an equal regime. Come now: we argue briefly as follows that this norm is twofold, the one primary, which the rationale of the common good supplies,² the other secondary, namely, the preservation of equality among the citizens.

² Concerning how this is to be understood, cf. below, no. 71.

Argument 1. An adequate norm must correspond perfectly to the nature of the right of which it is the measure. But only the twofold norm which we have indicated does this. Therefore.

The minor is proved. For the good which distributive justice furnishes is essentially subordinated to the common good: for it is the good of the parts; but the good of the parts as such must yield to the common good. Moreover, that good is *per se* and under the present regime to be rendered to the citizens in an equal manner: for it is owed to the parts as such, and the citizens are *per se* parts of society in the same manner, which equality is preserved under the regime which we use today. But regard for the common good corresponds to the subordination of the right; the intention of preserving equality corresponds to the manner in which the right inheres in the citizens; while if either consideration is omitted, only an imperfect rationale of the right is possessed. Therefore.

This is confirmed from the Encyclical *Rerum Novarum*, where the Supreme Pontiff, entering upon our argument, begins thus: "This further must be considered ... that the rationale of the civil State is one, common to the highest and the lowest. For working people are by nature citizens with equal right with the wealthy, that is, parts ... from which the body of the commonwealth is constituted."

Argument 2. What we were saying concerning the norm can be established briefly by this other reasoning.

Each citizen has a right to that part—**all and only that part**—of the common goods which will come to him from a rightly administered commonwealth. But this part is defined by that twofold norm. Therefore.

To the minor. For a commonwealth is rightly administered when regard is had first for the common good and then for the form in which the society itself is concretely constituted. Today, however, this form rests upon equality.

64. You will ask how distribution is actually to be ordered according to these rules.

For it is preferable to join immediately to the proof already given that corollary by which it may become more apparent to what our opinion amounts and by which the difficulties may more easily be solved or even proposed.

We omit the case of an unequal society. Therefore, in our civil States, attention must generally be given to the goods which are the matter of distribution and to the end of civil society.³

³ For, as we have already observed, we are treating political rather than religious society.

The goods to be distributed are: various offices; the protection of liberty and rights; and monies by which institutions, such as public schools, etc., are founded, the arts and sciences are fostered, or the need of citizens is relieved in various ways.

Nor must this be passed over: today practically all the resources supplied to the treasury come from duties and taxes.

The end of civil society comprises two parts: the efficacious protection of rights and the positive procuring of those things which are of common interest, since the private efforts of citizens would be ineffectual for attaining them.

It must further be observed that it is advantageous to the commonwealth that fitting rewards for virtues and distinguished deeds await the citizens, and that the destitution of many citizens which is in no way consonant with the general culture and happiness of society be repelled. For unless you oppose this misery, you will scarcely avoid indignation and disturbances.

Let us now explain briefly what rationale of distribution seems to us to be adopted:

a) There are goods—for example, public offices—which, even after they have been assigned to one person, retain a principal ordering toward the common good. These must always be conferred primarily with a view to the commonwealth. Therefore, the principal consideration is of all those qualities from which it is permissible to hope for a good administration of the office. Qualities of this kind are knowledge or skill, probity, prudence, practice or experience in affairs, and sometimes the very agreement of mind with those with whom the office must be discharged.⁴ Then, other things being equal, account must be taken of merits. For offices, since they have honor, profits, and various advantages annexed to them and can be bestowed upon only a few, seem by their nature to possess the character of a reward. Usage and common judgment agree, which command that, besides fitness, consideration be given to the time from which someone began to devote himself to the commonwealth, which magistracies he has already discharged, etc.

⁴ We borrow this from St. Thomas, II-II, q. 63, art. 2, ad 1, where he writes: “Sometimes, however, the kinsmen of an ecclesiastical prelate are equally worthy as others. And thus, without respect of persons, he can licitly prefer his kinsmen, because at least in this they are preeminent: that he can have greater confidence in them to treat the affairs of the Church in harmony with him.”

b) Concerning certain other advantages which citizens rightly hope for themselves from their community, all are pressed by the same species of necessity, although perhaps not to the same

degree. For all need public protection for the peaceful possession of goods and rights. This protection must be exercised toward all according to the quantity of rights which are exposed to danger. Nevertheless, if, as regards a certain species of rights, a danger is proper to some class, assistance must be brought to this class by a special provision.⁵

⁵ This is the most manifest doctrine of the Encyclical *Rerum Novarum*: "Rights, in whomsoever they exist, must indeed be observed as sacred; and public power must provide that individuals possess their own, by warding off and punishing injuries. Except that, in protecting the rights of private persons, account must be taken chiefly of the lowest and the poor."

c) Finally, the civil State may procure for itself from the fortunes of the citizens fitting resources by which it may foster the arts and letters and give to all the means of attaining that moderate sufficiency of fortune (*modeste aisance*) which seems to correspond to general prosperity.

Therefore, the distribution of those resources must be ordered in such a way that rewards are given to those who are prior in merit, while those which have the rationale of aid and subsidy are given according as each one is more in need and lacks a more excellent good.

65. III. Difficulties.

1. THAT JUSTICE SEEMS ALSO TO BE CONCERNED WITH DISTRIBUTING GOODS OTHER THAN COMMON GOODS.

For if a private person by testament appoints some college of persons—for example, a chapter—as heir, so that a proportionate part of the goods belongs to each individual canon according to his dignity in the chapter, the distribution will have to be made according to each one's dignity. But this kind of distribution pertains to distributive justice. Therefore, that justice is also concerned with goods other than common goods.

Reply. I deny the antecedent. To the proof, however, I distinguish the major. A distribution properly so called will have to be made, I deny; an analogical distribution, which retains some figure and appearance of distribution, will have to be made, I concede. I contradistinguish the minor. This kind of distribution (according to dignity) pertains to distributive justice where there is question of distribution properly so called, I concede; otherwise, I deny.

For not every distribution pertains to the species of distributive justice, but that by which satisfaction is made to the peculiar right which a perfect community is bound to observe toward its members. We call this distribution properly so called. But in the species objected, the individual canons, after the death of the testator, have a strict right, or a right of commutative justice, to a proportionate part of the goods.

2. ANOTHER NORM SEEMS TO HAVE TO BE ASSIGNED TO THE QUANTITY OF THE RIGHT: A JUST RECOMPENSE FOR WORK CONTRIBUTED TO THE PUBLIC UTILITY.

For a) it is perpetual in societies which join merchants or citizens that they participate in the common profit in proportion to the share which they contributed.

b) Nor is another norm suggested by Leo XIII in his Encyclical *Rerum Novarum*; for in the place where he recalls that distributive justice must be observed and explains its parts, he states the conclusion thus: "Equity therefore commands that public care be taken of the workingman, so that from what he contributes to the common utility he may himself receive something."

Reply. I deny the assertion if it is taken in such a way that the works furnished are either the principal or the universal norm to which attention must be given.

For we do not deny that the rationale of merit is among those rationales which, since they increase dignity, must be considered in the conferral of offices.

Nor do we deny that it is very expedient for rewards to be placed, as it were, in the midst, by which citizens may be attracted to the good arts and distinguished deeds.

But: a) insofar as the commonwealth precisely shows itself grateful, it satisfies a duty which is not juridical, is not proper to the community, and must not be furnished to citizens alone. This threefold characteristic sufficiently shows that recompense from gratitude is formally foreign to the province of distributive justice.

b) The stipend which is paid to those placed over certain administrations is owed to them from commutative justice as an agreed wage.

c) There are many goods by the distribution of which the State in no way remunerates merits, but alleviates needs.

d) And, in general, to define what utility the various orders of citizens contribute to the commonwealth and to compare their merits with one another is a work teeming with difficulties and errors which no one has thus far undertaken.

Therefore, no universal norm can be constituted in the remunerating of merits; indeed, if account is sometimes taken of them, they are nevertheless not the title which justice immediately regards, but the reason for conferring the good upon him who surpasses the others in merit is taken from the common utility or from the equality to be preserved among the citizens. Otherwise, that justice would scarcely be distinguished from the virtue which renders thanks.

With these things established beforehand, we arrange briefly the formal reply to the difficulties objected as follows:

To a) I distinguish the argument. And this proportionate part of the profit falls to each individual from distributive justice, I deny; from commutative justice, I concede.

For although, because of the facility of commerce, these societies in some manner imitate a moral person, this is a mere juridical fiction and something artificial. In reality, the goods do not belong to some person distinct from the members; they each preserve dominion over the common patrimony according to their own share and can exact a part of the profit as the fruit of their own thing, according to the maxim: *a thing bears fruit for its owner*.

To b) The Holy Pontiff teaches that certain goods are to be distributed according to merit toward the commonwealth, and that even in this respect the order of workingmen is not to be neglected, since they too, although less directly, serve the public utility, I concede; the Holy Pontiff establishes this rationale as the universal and supreme rationale of making a distribution, I deny.

For above he argues from the rationale of a part which the rich and the common people possess equally; while below he teaches that, in protecting private rights, singular care must be taken of wage-earners. "For the nation of the rich, protected by its own safeguards, needs public protection less; the wretched multitude, secured by no resources of its own, relies especially upon the protection

of the commonwealth. Therefore the commonwealth ought to embrace wage-earners, since they are numbered among the needy multitude, with singular care and providence.”

3. ST. THOMAS wishes the division of common goods to be made according to principality.

Reply. I distinguish the assertion. According to any principality whatsoever—for example, of wealth or talent—I deny; according to the principality which someone has reduplicatively as a part, I concede.

In establishing a norm of this kind for every society, St. Thomas is not opposed to the more definite norm which we posit for modern society. In a democracy, he thus continues, “principality is considered according to liberty.” What does this mean? Unless we are mistaken, precisely this: in a democracy, men equally free are distinguished by no principality *per se*. There remains, therefore, that principality which they acquire *per accidens* from their free act or condition, according to the various quality of the goods. These things plainly agree with our manner of speaking.

4. From the norm handed down, monies which are expended from the treasury for the relief of the needy would be governed by distributive justice, while they ought rather to be referred to charity or mercy.

Reply. I distinguish the assertion. From the norm handed down, those public subsidies by which need is relieved insofar as the common good demands would be governed by distributive justice, I concede; other subsidies, I deny. And I also deny the supposition: that others can be granted. For it is foreign to the modern regime to exercise mercy properly so called. Liberality must be performed from one’s own goods. Today, however, the civil State cannot meet even necessary expenditures from its own private dominion, but, as has often been said, is compelled to procure resources for itself through exactions. But the quantity of taxes must be measured according to the necessity of the common good. Therefore, the civil State is not permitted to exercise mercy except through goods left to it for this end. But the poor again seem to have a right of distributive justice to the equitable distribution of revenues of this kind.

Article III. Supplements to the Doctrine

I. COROLLARIES

66. Concerning other norms. The two other norms proposed toward the end of article I cannot be admitted.

a) The norm which estimates a right from merit does not apply to burdens to be distributed, nor can it be employed for every rationale of common goods.

b) The distinguished Toniolo also wishes too absolutely to order the division according to needs.

67. Whether offices are matter of distribution.

Because public offices carry with them several advantages which can be received by magistrates without detriment to the public good for which they were chiefly instituted, it is evident that these offices must be placed among those goods which are to be distributed equitably among the citizens.

But in vain would you object with Cardinal de Lugo's argument.¹ For we freely concede to him that those offices which are merely accessory to some principal function—so that the officials by whom they are filled are merely auxiliaries attached to someone who cannot furnish all things by himself—do not pertain to distributive justice, and that it is sufficient for the one placed over the principal function to associate suitable assistants with himself;² but he would be greatly deceived who, especially today, considered all public offices as parts of one potestative whole which one man—for example, a king—possessed. For very many offices subsist as something principal, concerning which the argument objected in no way holds; so that without doubt their proper parts must here be assigned to distributive justice, as Sánchez explains excellently in *Consilia Moralia*, cited place, ch. 1, doubt 36.

¹ *De Iustitia et Iure*, vol. 2, disp. 34, no. 19.

² For example, those who are called in French “secretaries” and “heads of a minister’s cabinet.”

What obtains, however, when magistrates are designated by popular suffrage, you have below in the scholium.

68. Concerning the proper equality of distributive justice.

Because distributive and commutative justice are two species of justice properly so called, each equals a debt. But that debt in distributive justice is constituted according to the just proportion to be preserved among the citizens, while in commutative justice it is constituted according to the quantity which already belongs to someone. To define what must be rendered to Gaius, the former observes what Peter has obtained according to his condition or merit; but the latter, neglecting consideration of Peter, observes how much already belongs to Gaius so that as much may be rendered to him. Therefore distributive justice attends, as Cardinal de Lugo says, disp. 1, nos. 45, 46, to equality between two proportions; commutative justice, to equality between thing and thing.

To use other words, the intention of the just distributor is directed toward preserving an equal proportion among the citizens, so that as the persons stand to one another, so too do the things which are rendered. This proportion will be defined both by the quantity of the thing to be distributed, if it is divisible, such as a sum of money to be expended as a subsidy, and by the degree which each one possesses according to the title to which attention must be given. That equality is expressed formally by comparing with one another, not two simple numbers, but two proportions, in approximately this manner: to Titius, who has a title as 1, there fall 5; therefore, to Gaius, whose title exceeds the title of Titius twofold, 10 must be rendered. This reduces to:

$$1/5 = 2/10.$$

This equality is called *geometrical* by the Scholastics, following the Philosopher; and it is the property by which distributive justice is distinguished from commutative justice. For they call the equality of the latter *arithmetical*,³ because it is constituted between the performance and the thing which already belongs to someone, so that *per se* no account is to be taken of other citizens or men: the quantity of my goods is not changed because of those things which Titius may happen to possess. Moreover, an equality of this kind is represented by this formula: $5 = 5$.

³ But someone would uselessly raise the question why these names were invented, as Cajetan already observed, *In II-II*, q. 61, art. 2.

Suárez⁴ seems to deny that geometrical equality is a property of distributive justice. He attempts to establish this with examples. But through them the distinction which intervenes between each justice, commutative and distributive, is instead illustrated. For he adduces the example of a debtor who, since he cannot satisfy all his creditors in full, pays a part to each one from commutative justice.

⁴ *Opusculum de Iustitia Dei*, sect. 3, nos. 4–8. Moreover, on account of what he has in no. 19, he differs from us in words rather than in the matter.

But if distributive justice were in question, the proportion observed would correspond perfectly to the intention of the virtue and would equal the debt. Now, however—setting aside the question whether the debtor is strictly bound to preserve this equality among the creditors in order to render to each his proportionate part—the obligation of completing the payment remains upon him as soon as he can, so that he may render to each one as much as he received from them and thus arrive at arithmetical equality.

Nor does the other species objected cause greater trouble, concerning a commercial society whose profit falls to the individual members in proportion to their shares. For why is that proportion observed? Not precisely in order that the persons be treated equitably, but so that each one may receive the proper fruits of his own thing. Hence an agreement was made among the members by which, with common consent, they assessed what each one would contribute to the common fund; and immediately from that agreement each one has the right to claim this or that quantity in proportion to his own contribution.

You will say the same thing briefly thus. Sometimes commutative justice preserves the appearance of distribution, just as distributive justice sometimes seems to render an absolute quantity, as when it wholly protects and safeguards certain rights of citizens. But commutative justice establishes a proportionate part as a means of defining the absolute quantity of a right, while distributive justice renders this absolute quantity in order thereby to observe the just proportion.

In still other words: $1 = 1$ and $5/5 = 5/5$ sound the same materially. But commutative justice considers the former manner of writing formally; distributive justice, the latter.

Nor must this other rationale of the distinction be neglected: commutative justice *per se* confers things of the same order. If you possess another's watch, a watch or its price must be returned. Therefore, if you cannot return something of the same order, you are not strictly bound to furnish a thing of another order.⁵ In distributive justice, on the contrary, the title and the thing which is rendered generally pertain to diverse orders. It grants, for example, money for virtue. This in turn demands geometrical equality, by which virtue is not immediately compared with monies, but, after virtues have been compared with one another, the same proportion is preserved between rewards as exists between the virtues.

⁵ Understand this *per se* and before the sentence of a judge.

69. Concerning privileges. Distributive justice is not injured when a true rationale of the common good either does not permit equality to be preserved among citizens or demands an unequal distribution. The reason is that the distribution itself is to be made only with the common good safeguarded.

Therefore, privileges which have a public cause are in no way repugnant to distributive justice.

70. Concerning subsidies by which institutions, civil States, and societies are assisted from the treasury. There is a twofold legitimate rationale for granting these subsidies. For either they are rendered as rewards by which citizens, whether all or those of a definite order, may be encouraged to cultivate virtues—for example, sobriety and thrift—or they are true subsidies for the relief of some need. In either case, they are to be rendered insofar as it conduces to the common good that by the assistance of this means these virtues flourish in society or such a need is relieved. And he who, led by another rationale, decrees subsidies would act against distributive justice, besides another sin to be defined from the title by which he is bound to care for the commonwealth. The same distributive justice will then provide that the subsidies be divided equitably in a proportionate part.

Rightly and deservedly, therefore, public power assists municipalities in completing works which either directly redound to the good of the whole commonwealth—for example, a harbor by which the commerce of a nation is enlarged—or whose utility, although circumscribed in place, is such that it is of public interest that it be fostered in towns or villages.

But care must be diligently taken that all are favored equitably.

Nevertheless, some allowance may safely be made for the distinction of the place: both because the good of the capital city is diffused into the subject localities, and because the splendor of the head adds splendor to the whole commonwealth.

Similarly, subsidies, if any are granted to societies of the kind in which some render mutual aid to others for a definite end (called in French *mutual-aid societies*), admit of a twofold explanation. For through these the commonwealth intends to excite or foster among the lower classes the endeavors by which future circumstances are provided for (*provision for the future*); and at the same time it desires to diminish the need and misery of workers. Nor in practice, if you attend to the rationales which are commonly proposed, is the consideration which the Holy Pontiff himself invokes neglected: namely, equitable compensation for the services by which even men of the common people benefit the universal community.

II. SCHOLIA

71. In what manner the exigency of the common good is the higher norm of just distribution. Because the quantity of the mass of goods to be distributed and the title by which a part of the accumulated mass belongs to the citizens must be defined according to the exigency of the common good, this exigency was therefore established as the higher norm. Nevertheless, regard for the common good that is owed pertains to legal justice; and public power is bound from commutative justice to regard that good. Therefore, the Prince, insofar as he attends to the common good, exercises not distributive but legal and commutative justice. Distributive justice then enters, by which he is obligated to make an equitable division for the citizens. The matter becomes manifest in the conferral of a public office. Who is worthy of the office appears chiefly from consideration of the common good; and from commutative justice toward the commonwealth, the Prince must assume one who is worthy. Then *per se*, distributive justice commands that the worthier be preferred from among those who are worthy.

But lest you wonder that a norm of distributive justice is thus taken from legal justice, take care to observe that the mean of some virtue need not be constituted by the virtue which intends it.

Thus the mean of temperance is manifested through the disposition of the body; the mean of commutative justice through the accomplished occupation of certain things. Therefore, nothing prevents the mean of distributive justice from being derived remotely from the exigency of legal justice.

72. Concerning the acceptation of distributive justice among the ancients. Sometimes whatever things have the appearance of distribution are referred by them to distributive justice: in that case this term in no way stands for a special virtue. Thus in St. Thomas, II-II, q. 63, art. 4, the judge himself, while assigning a thing to its true owner, exercises a certain distributive justice.

Moreover, the ancients had before their eyes almost exclusively the distribution of goods (monies) which might remain in excess in the commonwealth. In other words, they imagined resources to be available to the commonwealth in such abundance as exceeded the necessity of the common good. They declared that these goods must be divided among the citizens by the citizens' own right. But Molina⁶ already wisely observed that this happens very rarely. Today, however, this hypothesis can be banished among the most vain.

⁶ Treat. 1, disp. 12, no. 3.

73. How distributive justice is observed in conferring one office. Just as a divisible thing must be divided in a proportionate part among those who have a title, so distributive justice demands that an indivisible thing be rendered to him who is superior in merit.⁷ For in this way a just comparison is made among the citizens, and each one in his own place will come into a share of this kind of goods. In this manner, therefore, even when only one office is to be conferred, there is place for the observance of distributive justice. Cf. de Lugo, disp. 1, nos. 43, 44.

⁷ But if they are morally of the same merit, the choice seems to be left to the distributor.

74. Concerning popular election. For two reasons the people ought not to have regard to distributive justice in choosing deputies. For the right of electing is conceded to the people less as a certain office than as a prerogative and privilege of having rulers of the commonwealth acceptable to themselves; then, deputies in some manner participate in the rationale of mandataries who administer the commonwealth for the people, to whom the direct administration of the commonwealth cannot be entrusted.

Thus it happens that the people, while choosing certain persons, are considered rather to confer something of their own. But in entrusting our own affairs, we are free from consideration of distributive justice.

Therefore, to persons who are first in merit for obtaining a certain office there belongs: **a)** sometimes a right of commutative justice, as when, after a competition has been announced, it is sufficiently apparent that the one conferring the office has obligated himself from justice to choose the one who would win; **b)** sometimes a right of distributive justice, as when offices are conferred by someone from his official duty and there inheres in them a secondary rationale of private good; **c)** sometimes no right, as when the election is permitted to the judgment of the people. Cf. what was said above.

75. You will ask whether distributive justice must be observed in lesser communities. This question cannot be raised concerning societies proceeding merely from the compact of private persons who, for the end either of profit or recreation, or led by some similar intention, possess

certain goods in common, exercise a trade, etc. Here, all rights, if there are any, pertain to commutative justice. Rather, it concerns societies of persons which constitute a true community and which, by the generality of their end and their whole external species, present as it were an image of the perfect society of which they are parts. Of this kind in civil society are municipalities and to some extent provinces; of this kind also are religious communities in the Church.

Now, we judge that distributive justice inheres in these societies in approximately the same manner as legal justice. As we saw above, the legal justice which has a part in them is the same as that which safeguards the rights of the perfect community to which these lesser communities belong; and in no other manner does their authority, insofar as it assumes a public rationale, together with jurisdiction participate in the office of distributive justice belonging to those who are placed over the perfect society.

These things also hold concerning a religious community, especially as regards spiritual goods. At the same time, however, profession contains a certain rationale of compact, whose obligations, by reason of the motive for which they were undertaken, are urged chiefly by the virtue of religion.

76. You will ask concerning the rationale by which travelers and foreigners come into a share of common goods.

Reply. Everywhere today foreigners participate in many goods of the citizens: they are permitted to plead a cause in court, they make contracts, buy and sell goods, etc.

These things are explained first of all by the present law of nations, by which foreigners, especially residents, are assimilated to citizens in many matters, so that they must even be able to earn wages in the region in which they dwell. Then this humanity is in the interest of the citizens themselves, so that among other nations they may enjoy the same benefit. Nor is a rationale of equity lacking. For if, to give an example, foreigners are prohibited from employing private vengeance, ought not access to the judicial forum to lie open to them? If they pay taxes, ought not their goods and rights to be protected?

Parergon: Concerning Christian Democracy

Toniolo, *Il concetto cristiano della democrazia* [*The Christian Concept of Democracy*];¹ Chiaudano, *Democrazia cristiana e movimento cattolico* [*Christian Democracy and the Catholic Movement*];² Gayraud, *Les Démocrates chrétiens, leur Doctrine et leur Programme* [*Christian Democrats: Their Doctrine and Their Program*];³ Antoine, *Démocratie politique et démocratie chrétienne* [*Political Democracy and Christian Democracy*]; *La Démocratie chrétienne* [*Christian Democracy*]; a booklet published anonymously at Liège in 1899 by *Le Bien du Peuple*; Vermeersch, *La nouvelle Encyclique sociale* [*The New Social Encyclical*].

¹ This study, which obtained the greatest celebrity, first appeared in the periodical *Rivista Internazionale di Scienze Sociali e Discipline Ausiliarie*, Rome, 1896. It was rendered into French under this title: *La notion chrétienne de la démocratie* [*The Christian Notion of Democracy*]. Paris, Maison de la Bonne Presse.

² Against the expediency of this appellation.

³ This work stirred no slight controversy concerning the Catholic character of democracy. In this controversy the author had as adversaries both the writer of certain letters sent in the month of March to the newspaper *L'Univers*, and the newspaper *Osservatore Romano*, and the aforementioned Toniolo. You have these documents in the periodical *Questions Actuelles*, vols. 48, 49.

77. In what manner we shall speak of Democracy. It would be equally foreign both to the argument of this work, which concerns principles absolutely true, and to our intention to take up those questions which can require one solution for some circumstances and times and another for others. Nevertheless, we are not thereby prohibited from presenting distinct accounts either of the words or of the controversies, especially since a just account of things is ordinarily the beginning of concord among minds.

Therefore, since in most regions Christian Democracy is most frequently discussed, and in three of them—in Belgium, France, and Italy—there is no slight dispute concerning the thing and the name, it seemed good to us to set forth, with the greatest clarity we can, what this appellation looks toward and what points, controversies being omitted, ought to be agreed among Catholics concerning this matter. There is also this special reason: that this name seems first to have been invented in Belgium, in the year 1891.⁴

⁴ Cf. the historical inquiry placed before our booklet *La nouvelle Encyclique sociale* [*The New Social Encyclical*].

78. In what various senses the name is used. It cannot be denied that many meanings are attached to this expression. Of these we shall give the principal ones, to which, unless we are mistaken, the remaining definitions can be reduced.

1) In its original and most proper signification, *democracy* designates a political regime by which the multitude or common people become in some manner participants in the commonwealth; that is, they obtain sovereignty in whole or in part. This democracy is called *direct* when laws are enacted and affairs determined by a plebiscite; *indirect* if magistrates who administer the commonwealth are appointed by popular suffrage; it is called *mixed* if the monarchical or aristocratic form is tempered by a certain rule of the people; *pure* if the other forms are entirely excluded.⁵ Hence it is evident that today the regime is democratic almost everywhere, though generally mixed; while scarcely anywhere—for example, in Switzerland—do traces remain of direct democracy, which many ancient states employed.

⁵ Cf. de Parieu, *Principes de la politique* [*Principles of Politics*], ch. 4.

If you use the name of democracy in this way, then those among Catholics who strive by zeal and work that a democratic form of government be introduced or preserved must be said to espouse the cause of Christian democracy,⁶ as must those who, regarding the growing authority of the people as an unavoidable fact, labor to bring it about that this regime be informed by Christian principles and morals.⁷ For the latter, the end is religious, and democracy is not a matter of great concern; the former, on the contrary, embrace democracy itself with their affection and desire that the Church join democracy to herself by association and alliance.

⁶ Thus, at the Congress of Blois (4 April 1899), those who in France are called *Christian Democrats* professed themselves to be “a distinctly republican, distinctly democratic, distinctly Christian party.”

⁷ In this manner democratic studies were proposed in the letter which appeared in *L'Univers*, 10 March 1899. Cf. *Questions Actuelles*, vol. 49. E. Schérer, *La Démocratie et la France* [*Democracy and France*], emphasizes the unconquerable necessity of the fact in these words: “It is unworthy of a serious man, whatever sentiment democracy may inspire in him, to flatter himself that it can be overcome.”

2) Then, leaving aside consideration of the political form, by the name of Christian democracy may be signified the popular party of those who, adhering to Catholic truth, under any regime favor the

common people and apply themselves to their good and advantages. They favor the interests of the common people (in French you would say, *the interests of the people, of the workers*), just as others favor the interests of industry and of the middle class (*the interests of industry, of the bourgeoisie*).

3) But for some years the word *democracy* has begun to be employed in another, social sense, in which it designates a society in which, privileges having been suppressed, citizens enjoy equal rights, freely practice trades, and can aspire to every office.⁸

⁸ Cf., for example, M. Block, *Petit dictionnaire politique et social* [*Little Political and Social Dictionary*]. Paris, Perrin, 1896, s.v. "Démocratie."

Sufficiently akin, though not entirely the same, is the acceptation of *democracy* among those who take the part of Christian democracy. For them a democratic regime is a regime which takes peculiar care for the lot of the common people; and democracy itself is nothing other than the complex of social relations, or a social order in which there is a general cooperation of all for the good of the lower classes. Yet a moderate care for the other classes is not repugnant to this cooperation.

And they call this democracy *Christian*, because this manner of ordering society would correspond especially well to the principles of the Gospel.⁹

⁹ They appeal, for example, to this passage of the Encyclical *Rerum Novarum*: "The sum of these things is this: whoever has received a greater abundance of goods by the gift of God, whether these be goods of the body and external things or goods of the mind, has received them for this reason, that he may employ them for his own perfection and, at the same time, as a minister of divine providence, for the advantage of others."

79. Accordingly, to set forth more fully the things which are commonly¹⁰ pleasing to those who defend true¹¹ Christian Democracy:

¹⁰ For in concrete circumstances, according as the variety of circumstances bears, some declare that they desire one thing and others another (their program).

¹¹ For it cannot be doubted, after the things which we have seen done in Belgium and elsewhere, that there is a counterfeit species of patrons of Christian Democracy.

1) They are especially hostile to economic liberalism and socialism. Against liberalism they object chiefly to individualism and to the defective political theory according to which only a certain negative protection of rights would belong to the State. They reject socialism because of the hatred by which it separates the classes of citizens and because of the war which it declares upon the family and the private possession of goods.

2) No form of government is repugnant to them, nor do they seek the suppression of royal dignity; nevertheless, they sufficiently favor the enlargement of the political rights of the people. For through these they hope that they will better promote the cause of the people. From another quarter, the more the people increase in resources and the civil culture of all is perfected, the more, as though by a downward-flowing channel, a democratic form of political government is reached.¹²

¹² Cf. Gayraud, op. cit., pp. 14–144.

3) They enlist citizens of all classes into their party, and they do not wish to be regarded as a private party. But if they seem to make greater use of the common people, they say that this must be attributed to the indolence or prejudices by which many citizens of better fortune are hindered from complying with their counsels.

4) They assign a twofold reason why they aim so greatly at promoting the advantage of workers: both because they judge that, under the present constitution of society, the common people are treated unjustly and labor under many evils; and because, as they contend, the genuine administration of the commonwealth ought chiefly to redound to the good of the class which surpasses the others in number.

5) They perpetually rely upon the Encyclical *Rerum Novarum*; they especially favor associations of incorporated workers (*corporations*); in many matters in which workers cannot hope from liberty alone for an efficacious protection of their rights, they appeal to the protection of the State or of the law. Examples are: compensation for accidents, care for women and minors, and even for those who are strong in body, whom they wish to be free from labor either excessively prolonged or imposed without necessity on feast days or at night.

They affirm, moreover, that the present order of things needs correction in very many respects; and they consider that associations of citizens of the same condition (*corporations*) will be the principal instrument of reform and, as it were, the hinge of a better order.¹³

¹³ "The Christian democratic party is above all a social party, which wills and pursues, first and directly, profound reforms in the economic organization of this society." Gayraud, op. cit., p. 159.

80. What things ought to be agreed among Catholics concerning these matters.

1) "No one of the various forms of the commonwealth is condemned in itself, since they contain nothing repugnant to Catholic doctrine.... Indeed, neither is it condemned in itself that the people should participate more or less in the commonwealth; and this, at certain times and under certain laws, can pertain not only to the advantage but also to the duty of citizens." Leo XIII wrote these things in the Encyclical *Immortale Dei* (1 November 1885). Earlier the same Pontiff had warned that "the license of seditions is repugnant to reason."

It follows from this that Christians are free, each according to his own persuasion, to favor the democratic form of political government by legitimate means, or to oppose it. But that the regime existing in fact be imbued with Christian principles, every true Christian will procure by desire and work.

Thus far concerning the first acceptance of the expression.

2) As regards the second: just as nobles, the wealthy, and men of the middle class are legitimately associated so that they may provide for their own advantage, so indeed are parties honestly constituted for the peculiar benefit of workers. Nevertheless, a party of this kind will be distinguished from the more general cause of good men as a part from the whole.

3) What, however, must be observed concerning the third signification?

a) **Concerning the end of society**, first, we must reject the error of many rationalists, who hold as the ultimate end of civil society some public good conceived in an abstract manner, or the good of some collective Being, and attribute to it a despotic authority over the citizens. That error must be rejected no less than the other, which has prevailed more in practice than in theory, and from which kings would reign for themselves. But "philosophy and Christian faith agree alike that the administration of the commonwealth belongs by nature, not to the advantage of those to whom it has been entrusted, but to the advantage of those who have been entrusted to them."¹⁴ But that through

this administration the good of the lowest class ought to be pursued more than that of the others can be freely disputed among Catholics.

¹⁴ Encyclical *Rerum Novarum*.

b) That in present-day society men who are devoted to servile arts are afflicted by many evils and must be assisted is inculcated far too openly in the Encyclical *Rerum Novarum* for it to be denied by a Catholic man.¹⁵

¹⁵ While we speak thus, we attribute to these letters the authority which in itself is common to Encyclicals. For through them the Supreme Pontiffs ordinarily propose authoritatively a doctrine infallibly and exclusively safe, to which, as coming from the legitimate Pastor and universal Legislator, external and internal assent is owed. Nevertheless, they do not exercise intensively the supreme authority which they possess unless they employ words which clearly signify the will to define, that is, to bind the universal Church by a definitive judgment to assent to a doctrine as infallibly true. Pius IX, for example, employed words of this kind at the end of the celebrated Encyclical *Quanta Cura*.

It is sufficient to adduce these passages: “We plainly see—and all agree—that provision must be made quickly and fittingly for men of the lowest lot, since the greatest part of them are undeservedly placed in a miserable and calamitous condition.”¹⁶

¹⁶ This very word, and the reasons which are immediately added, do not permit you to distort the expression into the signification of moral misery.

“As regards the protection of bodily and external goods, first of all the wretched workers must be delivered from the cruelty of greedy men who intemperately use persons as things for gain.” In the same place various things which must be protected are indicated. “On one side, a party powerful because exceedingly wealthy.... On the other, a needy and powerless multitude.”

To what extent, however, in this or that region the common people are oppressed by evils of this kind is left undecided by the pontifical letter.

c) That workers, through institutions and laws, “have been handed over isolated and defenseless”; that their associations have the greatest power to remedy present evils; and that there is a place for the opportune intervention of public power: these things are expressly taught in the aforementioned Encyclical. Yet to what extent the evils cohere with the present manner of practicing the trades (with mechanization and capitalism, as they say); in what manner workers are to be assisted by the protection of the commonwealth, and their associations organized; and to what extent, finally, the present social ordering is to be changed for the better: concerning these things, so far as concerns the Encyclical, a free option is permitted.

81. Concerning what matters Catholics chiefly disagree.

1) Whether or not it is expedient to call the universal cause of good men by a new name (Christian Democracy).

2) What must be held theoretically concerning certain points; for example, by what title a family wage must be paid.

3) What must be thought concerning the present state of affairs, since some incline to a harsher interpretation and others to a milder one.

82. Consequences of the things said.

1) Leaving aside both those who rather manifestly support the tenets of the liberals, and those who all but openly sow hatreds and discords after the manner of the socialists, those who are called Catholics in the true sense, as regards the matter, at least if you consider doctrines or principles,¹⁷ do not seem to disagree greatly among themselves; and so many endeavors are common that the few things which are disputed cannot greatly obstruct concord among minds.¹⁸ Add also that several things which are less clearly evident are to be left by each side to the expediency of times and circumstances. For all who are wise, whether they adhere to democracy or oppose it, will neither imprudently thrust new things upon society, nor, if it is later established that something in the present order must be corrected, will they refuse their labor.

¹⁷ We add this because, concerning execution (putting into practice), perhaps there is greater disagreement in certain regions and among Catholics. For those who abound in resources easily fear that burdensome duties must be sustained by them and that the loss of many things must be borne. But to move the minds of those who are pious and religious, it will always be better to insist firmly but prudently than, by a violent or precipitate manner of acting, to give them cause openly to resist your undertakings and to harden themselves in their former way contrary to your desires.

¹⁸ The same is affirmed by the distinguished Toniolo at the beginning of his study.

2) Bitter dissensions have flowed less from arguments than from the manner of speaking and acting by which persons were offended; and above all it is to be deplored how, in certain newspapers, the things which are said and done by Catholic men who favor the other opinion are subjected to greater ridicule, reproaches, or suspicions than if they were the sayings or deeds of an open enemy.

3) Nothing has harmed Democracy more than the evident excesses of certain persons;¹⁹ and it is especially to be desired for that cause that they employ the works of all classes to accomplish the things which they contemplate for the benefit of the common people. For in this way the advantage of the poor and workers will be served more efficaciously. In this matter we shall be greatly assisted if we employ methods which savor not only of Christian firmness but also of meekness and longanimity.

¹⁹ Hence there are some who, in order that occasions of error be cut off, judge that the expression *Catholic democracy* should be substituted for the name *Christian democracy*.

4) All must strive with a sincere will toward this: that they obey those wishes of the Holy See and of the sacred Prelates which more than once have been expressed,²⁰ and, internal contests being omitted except when an opportunity is given to deliberate peacefully concerning them, that “with minds and endeavors united,” all contend for that “which is the common purpose of all: to preserve religion and the commonwealth.” At the end of this commentary, it is worth the effort to recall other admonitions which the Supreme Pontiff gives at the end of the Encyclical *Immortale Dei* concerning the manner in which those things “about which honorable disagreement can exist” are to be disputed. “If there was any dissension beforehand,” the Supreme Pastor thus continues, “it is necessary to destroy it by a certain voluntary forgetfulness; if anything was done rashly, if anything unjustly, to whomsoever that fault may at last belong, it must be compensated for by mutual charity and redeemed by a certain special obedience of all toward the Apostolic See.”

²⁰ The documents which more properly concern Belgium you have in our *Manuel social* [*Social Manual*], pp. 219, 232–234 (1st ed.). There should be added the letter of the Most Reverend Bishop of Liège, sent from Rome to the Reverend Father D. Rutten on 18 April 1899, with the preface of the *Bien Public* of the same month.

82bis. What the Encyclical *Graves de Communi* taught.²¹ Of these things written earlier, no part seems to us to be retracted or corrected after Leo XIII determined to deliver authentic documents to Catholics concerning this argument. For in the Encyclical Letter *Graves de Communi*, socialism again having been repudiated, the Supreme Pontiff in the first part permits Catholics, while retaining the social use of the word *Democracy*, to call by the name *Christian Democracy* “the endeavor to console and elevate the common people,” which “according to the natural and divine law tends to this alone: that those who sustain life by hand and craft be brought into a more tolerable condition and gradually have the means by which they may provide for themselves; that at home and openly they may freely fulfill the duties of the virtues and of religion; that they may feel themselves to be, not animals, but men; not pagans, but Christians; and thus that they may strive more easily and zealously toward that one necessary thing, toward the ultimate good for which we were born.” At the same time, as from something Christian, he wishes various causes of offense removed from it:

²¹ Our humble commentaries on these letters, set forth in the booklet *La nouvelle Encyclique sociale* [*The New Social Encyclical*], were offered to the Supreme Pontiff together with this work *De Iustitia* and were kindly honored by a letter given by him.

“Lest, under any concealed endeavor, a popular state be fostered or preferred to the other political forms; lest the virtue of the Christian religion appear to be narrowed to the advantages of the common people, as though the other classes of the commonwealth were set aside; lest, finally, under a painted name there lie hidden some design of detracting from any legitimate authority, civil or sacred.”

In the other part of the letter, however, he exhorts Catholics in most grave words that, in so great a crisis of affairs, by the example of the virtues and by intense social action they promote the common good. Lest they err concerning the very notion of the social question, as though it were merely economic, let them study to do all things “with religion as guide, helper, and companion”; let them not fail to exercise every manifestation of charity, spiritual and temporal, with almsgiving by no means despised; let the work especially of those “to whom station, wealth, and the cultivation of mind and character procure somewhat more authority in the state” be summoned; and let all, turning away from every intemperance or imprudence of words, the causes of contentions having been removed, cooperate as one, and therefore let them—priests most of all—obey the command of the sacred Prelates. For it is most true that the question “is moral and religious above all, and for that same reason is to be resolved especially from the law of morals and the judgment of religion.”

There followed thereafter more definite declarations and rules by which Catholics, especially those of Italy, were to be informed toward prudent action. Cf. the Instructions contained in the letters sent to the Ordinaries of Italy by the Sacred Congregation for Extraordinary Ecclesiastical Affairs, on 27 January 1902.

Sometimes, however, the excessive impulses of certain persons must be restrained and checked, who, carried away by false zeal, say or propose things which are very foreign to evangelical meekness and Christian docility. This is proved by the most recent rebuke with which the Italian Catholic periodical *Il Comune* was censured in the name of the present Pontiff, Our Most Holy Lord Pope Pius X.²²

²² Cf., for example, the letter in *Civiltà Cattolica*, ser. 18, vol. 11, p. 703, sent by the Pro-Secretary of State to the Bishop of Orvieto on 7 September 1903.

Question III: The Right of Suffrage and Taxes

Outline of the Question

83. The timeliness and place of the question. Although we are still occupied with more general arguments, it nevertheless seemed good to append to the preceding question another, composed of two parts and sufficiently particular, but one which coheres with the principles handed down concerning legal and distributive justice, and after which it will no longer be necessary for us to treat either of these kinds of justice specifically. Moreover, the question is one of those which today never fail to keep minds in suspense and divided, so that it plainly corresponds to the intention of this work.

84. The treatment of the question. We shall now disclose in a few words how we intend to execute what has been proposed:

- a) We shall in no manner examine what the present circumstances demand, or what system either of suffrages or of taxes, these circumstances having been observed, seems that it should be introduced into the laws; for this would be to act as a politician, which we utterly abhor;
- b) Neither shall we rehearse those arguments which are ordinarily disputed in philosophical institutes and are sufficiently clear to Catholics; for we direct our attention specifically to present-day controversies;
- c) But we shall inquire what the genuine character is both of the right of suffrage and of the obligation of paying taxes; then we shall define somewhat what parts justice claims for itself in this matter and what can be elicited from absolute principles concerning the manner of ordering the right of suffrage and the exactions of taxes.

Chapter I: The Right of Suffrage

St. Thomas, I-II, q. 105, art. 1; Waffelaert, op. cit., vol. 2, nos. 406-413; E. de Parieu, *Principes de la science politique* [*Principles of Political Science*].

Article I. Initial Presentation of the Controversy

85. The subject of this chapter is defined more precisely.

- a) We shall speak only of that right of suffrage by which the people elect magistrates, especially those through whom laws are enacted (deputies).
- b) Moreover, we shall consider these two points: α) What is the exact rationale of this right? β) From what principles must its right ordering be made?

86. The opinions of the doctors. Most of the Scholastic doctors are of almost no assistance to us, since they pass over our question in silence.

St. Thomas, however, must be excepted, from whom we receive these teachings:

a) Although of the three forms of the state—the monarchical, aristocratic, and democratic¹—none is absolutely good or bad, nevertheless a regime composed in some manner from these three is *per se* to be preferred. For he has these words in I-II, q. 105, art. 1, corpus: “For such is the best² polity, well mixed from kingship, insofar as one presides; and from aristocracy, insofar as many rule according to virtue; and from democracy, that is, the power of the people, insofar as princes can be chosen from the people, and the election of princes pertains to the people.”³

¹ You will not wonder that the Holy Doctor elsewhere (*De Regimine Principum*) defines democracy in somewhat harsh words if you observe that this word, in the Philosopher, designates the corrupt form of popular government, almost as tyranny is opposed to monarchy and oligarchy to aristocracy; but the genuine form of democracy is called *polity*. Cf. *Politics*, bk. 3, ch. 5. Molina already notes this, disp. 23, no. 13.

² Others read: “But such is every polity.”

³ In this matter St. Thomas adheres to the perpetual tradition of those who think moderately. For Aristotle had already so pronounced; so too Cicero: “I judge that a certain fourth kind of commonwealth is to be approved above all, one moderated and mixed from the three which I first named” (*De Republica*, bk. 1, ch. 29; cf. also bk. 1, ch. 45). More recent authors agree, so that a moderation of this kind seems to correspond to the more universal conditions of men.

β) Nevertheless, it is necessary that the people not be unworthy of the right with which they are endowed. Cf. I-II, q. 97, art. 1: “If gradually the same people, having been depraved, have a venal suffrage and entrust rule to disgraceful and criminal men, the power of conferring honors is rightly taken away from the people and returns to the judgment of a few good men.”

From these principles it is perhaps permissible to argue that the Angelic Doctor would not have recoiled from this tenet of Ahrens:⁴ “For the combination [of political forms] to be just, it must be such that it permits a successive enlargement of the democratic element, in proportion as civilization extends over a greater part of the nation.”

⁴ *Cours de droit naturel* [Course of Natural Law], p. 386. He himself taught at Brussels.

b) As regards the more recent authors:

a) Those who write on moral theology number the right of suffrage among privileges whose positive use is not commanded by virtue of commutative justice. Cf. Most Illustrious D. Waffelaert, *De Iustitia et Iure*, vol. 2, no. 406; Génicot, *Theologia Moralis*, vol. 1, no. 359.

β) Others, however, who are occupied with political studies, depart chiefly into two parties. For the Rationalists, the right of suffrage (the electoral franchise) is a natural and innate right of the people through which those who possess supreme power obtain the delegation without which no one would rule legitimately. For they say that by this means alone a man divests himself of his inborn liberty and independence and transfers his autonomy to the community. But they wish the divestment to be absolute, whence whatever right and autonomy inhered in individuals would thereafter belong to the state.

From this error flow these two conclusions as necessary: a) strictly universal suffrage, conceded equally to all, since the condition of all is one; b) after the suffrage of individuals has been cast, complete servitude and the omnipotence of the State, except that perhaps the right of rising up to bring about a revolution remains to the citizens (the right of revolution).

These things being omitted, however, there is sufficient agreement among the others that the right of suffrage is entrusted to citizens as a certain office to be discharged by them.

Nevertheless, not a few admit that this rationale of an office is only imperfect,⁵ so that they seem to hold the same opinion as most theologians.

⁵ Thus D. M. Block, *Petit dictionnaire politique et social* [Little Political and Social Dictionary]. Paris, Perrin, 1896, s.v. “Électorat”: “The electoral franchise can be conceived as being, to a certain degree, a function.” Likewise, in the Belgian Parliament, when D. Beernaert (*Annales de la Chambre* [Proceedings of the Chamber], 1893, p. 812) had said, “The right to vote is a function with which society invests those whom it judges capable of fulfilling it,” D. Woeste (*ibid.*, p. 898) observed that this office must be distinguished from other offices: “An accepted function is one thing; a conferred function is another: the right of suffrage is a conferred function and not an accepted function.”

If we now ask about the manner in which the right of suffrage is to be ordered, there are some who, from absolute principles, wish this or that form either to be commended or condemned. This was recently observed in Belgium concerning the system by which each notable part of the electors is permitted, according to the number of suffrages, to elect some deputies (proportional representation). For some contended that without that system the government which they call representative lacked truth, while others thought that through the same system the rights of truth were denied and political skepticism introduced.

Article II. Formulation and Arguments of the Proposition

THESIS VI

The right of suffrage is a legal and burdensome faculty of designating magistrates through whom, at least in part, the commonwealth is governed.

Therefore, in its ordering, the common good is to be considered primarily; the equal distribution of the right, secondarily.

87. I. State of the Question. 1. THE INTENTION OF THE THESIS. We propose two parts. In the former we define both the nature of the right of suffrage and its object: its *nature*, indeed, when we say that the right of suffrage is conceded as a burdensome privilege—and thus we assent both to the common tenet of the theologians and to the opinion of those who ascribe the right of suffrage to the class of imperfect offices; its *object*, however, when we add that the privilege looks toward the designation of magistrates through whom the commonwealth is governed. For by these words we cut off the false understanding according to which the right of suffrage would be the manner in which the people administered the commonwealth through deputies as through mandataries strictly so called.

In the latter part, in the manner of a corollary, we then hand down the rules for the best constitution of this right, and at the same time explain what parts justice can sometimes claim for itself in this matter.

2. THE TERMS ARE EXPLAINED.

The right of suffrage—popular suffrage, namely, by which deputies are principally elected.

Is a faculty. By this word we remove from this right the rationale of an office properly so called. For a faculty directly signifies a certain benefit, honor, or advantage of the privileged person.

Legal: because it flows from law and belongs to those whom the law judges should be furnished with this faculty; it is far from being a right conferred by nature upon individuals of itself.

Burdensome, insofar as it produces obligations.

Of designating magistrates through whom ... the commonwealth is governed. By these words we contend that those who are elected properly preside over the commonwealth and are adorned with true power, so that in their own name and by their own judgment they administer the commonwealth, and do not merely receive a mandate to determine affairs according to the judgment of the electors. We therefore repudiate what are called imperative mandates. Nevertheless, electors are not prohibited from seeking deputies who agree with them, or even from exacting certain guarantees. Hence we see candidates announce what they intend to do (their program); and, as equity counsels, deputies resign their office if in some principal matter they disagree with the electors.

The designation itself is not always immediate. For not rarely, at least as regards senators, the people designate only electors who then designate the senators.

Magistrates are ordinarily, as we have already warned, those who enact laws and are called deputies or senators. But if, as in the federal States of North America, the judges themselves, or, as in England, the distributors of the tax which is exacted to support the poor, or finally other magistrates, are to be appointed by suffrage, the matter plainly must be determined, as is evident, by the same principles.

At least in part. We add this because, where the regime is mixed, there are some who come into a share of public power by a title other than suffrage.

Therefore, in its ordering, the common good is to be considered primarily. Therefore, this must be the direct and principal consideration of those who enact laws concerning the right of suffrage: that they consider what rationale of the right of suffrage can contribute to the best administration of the commonwealth, according to those qualities which it is established are required in administrators: the will for the common good, prudence, efficacy of rule, etc.

For it is unlawful to establish the order in such a way that your private opinion concerning the commonwealth prevails.¹

¹ Yet today nothing occurs more frequently in practice. And, what is worse, while the rationales of the true religion are neglected, the vain dogmas of a certain liberalism are proclaimed as unshaken; and, without scruple, rights and liberties are constituted in such a way that they can inflict no detriment upon "that higher idea." This appears especially in France, concerning the "inviolable" laws of the impious republic, and likewise in Italy, concerning the manner of conceiving the political unity of the kingdom.

The equal distribution of the right, secondarily. Therefore, if we give the first place to the common good, we do not thereby regard the rationale of distributive justice as none or as to be despised. Therefore, insofar as the public good permits, one must strive toward this: that those who possess this right by an equal title have the same power of suffrage, and that those who are equally able through it to assist the public good equally possess it. For in this way distributive justice will be satisfied.

II. The thesis is proved.

88. 1. THE FORMER PART, WHICH CONCERNS THE NATURE OF THE RIGHT OF SUFFRAGE.

But. The right of suffrage is a legal faculty.

First Argument. For unless it is an innate right of the citizens,² it is entrusted by law either as an office properly so called or as a faculty. But it is neither of the first two. Therefore.

² Thus D. Janson, in the chamber of deputies of Belgium, 1893, p. 921.

The truth of the major—that is, that there are only three options—is sufficiently evident both of itself and from the opinions cited.

The minor is proved. a) For an innate right:

α) It is defended only by those who falsely imagine that perfect society is similar to a private society, so that it would be entered into and dissolved by the will and consent of its members. The right of suffrage then looks toward this: that each one may have the opportunity to surrender his autonomy or to assent to the form and government of the society.

But civil society, since it is a natural institution, has drawn from nature itself the right to exist as well as to possess that tempering of the commonwealth which is expedient for the common good. For these things to be introduced, the consent of individuals is by no means necessary; nor is it lawful for anyone to assent to the state only under this condition, that through the right of suffrage he be a participant in the commonwealth.

β) Logically it would infer the universal suffrage of women and of all who are sufficiently possessed of reason. Yet this has hitherto pleased very few.³

³ Cf. the things set down below concerning this question.

b) The rationale of an office properly so called must also be excluded.

For α) an office properly so called must be discharged from an obligation of commutative justice, as though from a contract. But a contract rests upon mutual consent, and especially upon the consent of him who undertakes the obligations. Hence only in desperate circumstances, as when the Roman Empire was declining, did certain public offices begin to be imposed upon citizens. But it is not only those who have asked for it or have not shunned it who obtain the right to cast a suffrage, but whosoever are adorned with the legitimate qualifications. Therefore, if it were an office, an almost perpetual and involuntary attachment of nearly all citizens to an office would be introduced.

β) Moreover, if you consider the object of an office properly such, that object is a certain necessary administration of the commonwealth, such as enacting laws, pronouncing judgment, etc. Here, however, it is a question of the election of magistrates; but this manner of constituting them is by no means essential of itself to the state.

γ) Both the doctrine of the theologians⁴ and the common sense of men agree with our position: there is no one who judges himself bound in justice, as though by reason of an office, to cast a suffrage. Indeed, there are very few regions in which citizens are compelled by any law to present themselves at the elections.⁵

⁴ Cf., for example, Most Illustrious Waffelaert and Génicot, cited places.

⁵ See the things said by D. Woeste in the Belgian Chamber of Deputies, *Annales Parlementaires* [Parliamentary Proceedings], 10 March 1893, p. 898.

Second Argument. The very rationale under which the right of suffrage is ordinarily celebrated and extolled is that of political liberty, the prerogative of a free people, etc. For these things sufficiently reveal a faculty, but by no means an office properly understood.

B. It is a burdensome faculty.

a) By that right, citizen-electors can do something so that the best rulers may be placed over the commonwealth; and no one fails to see how greatly this matter concerns the common good of civil society. Indeed, that it matters greatly to the Church herself and to her peace and safety who preside over political society is placed beyond doubt. But, as citizens of the Church and of the State, we are held by a perpetual obligation to care, according to our ability, for the necessary common good. Therefore, as citizens and Christians, obligations accrue to us from the right of suffrage.

b) Furthermore, if you wish to use your right, then in electing magistrates the strict right (of commutative justice) which Society possesses—that those honored with offices be worthy—cannot be neglected. Hence, from commutative justice, you cannot, at least by an efficacious suffrage,⁶ vote except for a candidate who is judged worthy either absolutely or relatively. We call him relatively worthy whose election seems likely to bring fewer detriments to the common good⁷ than the election of his opponent, so that, at least to ward off the worse man, it is lawful to favor him.

⁶ We call *efficacious* a suffrage which has a probable influence upon whether this man rather than that one is elected.

⁷ We use these words deliberately. For it can happen that the election of a person worse in himself (for example, a socialist) may seem less harmful than the election of a person enrolled in the more moderate parties of liberalism. But since the matter must be judged from the common good, the person worse in himself must be called, in this case, less unworthy.

C. It is a faculty of designating magistrates through whom, at least in part, the commonwealth is governed.

For this is the obvious interpretation of the matter. The same laws which confer suffrage upon the people attribute the right of enacting laws not to the people but to the deputies (taken collectively). The conclusion is confirmed from the fact that, when popular elections are held, even most matters to be deliberated are unknown. Nor is a deputy ever accused of strict injustice toward the electors because he has approved these laws or decrees rather than those. Furthermore, if the deputy were properly a mandatary, he would hold the place only of those who had elected him; nor, by passing beyond the limits of the mandate, would he still act as a deputy. But now, in however small a region he was designated, the good of the entire realm is entrusted to him,⁸ and no care is taken concerning the observance of the limits of any mandate. Moreover, the doctors agree in this matter. Nor does St. Thomas intend anything else when he says that, in a mixed regime, this pertains to democracy: that the people elect princes.⁹ For princes are none other than those who truly rule.

⁸ Hence the Belgian Constitution has these words, art. 32: “The members of the two chambers represent the nation and not only the province or the subdivision of the province which appointed them.”

⁹ I-II, q. 105, art. 1, corpus. Cf. above, no. 86.

89. 2. THE LATTER PART IS PROVED, CONCERNING THE RULES ACCORDING TO WHICH THE ORDERING OF THE RIGHT OF SUFFRAGE IS TO BE MEASURED.

But. Therefore, in its ordering, the common good is to be considered primarily.

For a faculty or prerogative whose cause is public must be ordered chiefly with a view to the common good.

a) The right of suffrage is of this kind. For when, in an equal society, we see a certain faculty attributed to some citizens and denied to others, every just rationale of the discrimination must be sought from a public cause.

Furthermore, by its object the right of suffrage is concerned with designating magistrates. But since it is a strict right of Society that it be ruled by worthy men, the privilege must plainly be ordered in such a way that it conduces to the election of the best. But thus, again, the primary ordering of the right must be made with a view to the common good.

B. The equal distribution of the right is to be considered secondarily.

This is evident from the fact that this right has the rationale of a good, of a privilege pertaining to the community. Cf. the preceding thesis.

90. III. Difficulties.

The difficulties which cohere with errors concerning the nature of political society being omitted (concerning which, consult the books which treat natural law), only one seems that it must be touched upon. It proceeds from the law which, as has been enacted for some years in Belgium, compels citizens to involve themselves in the elections. Hence it is argued thus:

Such is the right of suffrage that sometimes it must necessarily be exercised by law. But a right of this kind differs in nothing from the exercise of an office.

Nevertheless, the reply is that this difference intervenes: that obligation is merely the one which penal laws produce, while we are held to exercise an office from commutative justice.

That the obligation of the law concerning the casting of suffrage is no greater is suggested both by the common understanding of the matter and by the very rationale of the law.¹⁰ For the rationale is, first, lest too many abstain from the election to the detriment of the common good, especially since citizens who are greater lovers of civil peace are ordinarily infected with this indolence; and second, that those who are of a humbler condition may have a protection by which they can evade the devices of powerful men who might wish to prohibit them from exercising their right. Now, for this end the sanction of a penalty to be sustained is sufficient.

¹⁰ Cf. Génicot, vol. 1, p. 359.

The same is confirmed from the fact that he who deliberately casts a suffrage of no value does not violate the law.

Article III. Supplements to the Doctrine

I. COROLLARIES.

91. Concerning the obligation of conscience. The obligation of conscience by which someone is bound to vote does not arise formally from the right of suffrage, but from the general obligation of legal justice by which someone is bound both to his civil fatherland and to the Church.¹

¹ Sometimes a religious rationale commands that you abstain from casting a suffrage. Thus in Italy.

Hence one who is merely absent from the elections never becomes guilty of violated commutative justice, even if he foresaw injuries to be committed by those elected.

In casting a suffrage, however, the right which Society possesses—that it be ruled by worthy magistrates—must be observed from commutative justice. And to mark a ballot for an unworthy man is to commit against that community an injury harmful *per se*, which, according to the efficacy and the damage which followed, will give rise to an obligation of restitution from general principles.² Moreover, to be an efficacious cause of an election of this kind, by which an unworthy man is preferred to a worthy one, is intrinsically evil.

² We deliberately add these things in order to warn that the rules concerning fault, concerning true influence upon the damage, and concerning the other conditions which are required for an obligation of restitution to arise, and concerning excusing causes, are prudently to be transferred to this matter. There is a sufficiently great variety of cases here. But to pursue these in discourse is foreign to our purpose. Authors who are occupied with the practical discipline are to be consulted.

Furthermore, in the same suffrage there inheres a rationale of cooperation in all the injuries which unworthy magistrates are foreseen to be about to commit, by reason of the office obtained, against the rights either of the State, of the Church, or of private persons.

This cooperation can be formal, as if you are moved to cast a suffrage for the purpose of obtaining an unjust decree. Otherwise it will be material.

Come, then, in order to define more precisely the kind of material cooperation: first, this cannot be regarded as the cooperation of one commanding. For through it the office of administering the commonwealth well is merely entrusted of itself. Nor is it *per se* the cooperation of one consenting (taking the word as it is employed in the moral treatise on cooperation), since the suffrage concerns not some law to be enacted but a person to be designated. Rather, it is the cooperation of one participating mediately, sufficiently similar to that of a seller who delivers weapons to someone whom he knows will abuse them. Therefore, this cooperation can be excused for a proportionate cause. Concerning this cooperation, cf. Most Illustrious D. Waffelaert, *Nouvelle Revue Théologique* [*New Theological Review*], vol. 14, p. 490.

92. Certain statements are proved.

a) St. Thomas, I-II, q. 105, art. 1, deservedly commends a certain participation of the people in the commonwealth, so that the peace of the people may be preserved and every government may be made more acceptable to the people. Nor, in the reply to objection 2, does he less wisely object to a purely monarchical government the danger of tyranny.

b) Several Belgian statesmen also spoke rightly concerning the nature of the right of suffrage in the chamber of deputies. It is useful to recite some things here:

“A legislative election is not a mandate; it is a choice ... the choice of the man whom one judges most capable of fulfilling well the functions of legislator and, if need be, those of governor.... This man is not bound to the elector by a contract which subordinates him to the latter: the elector designates him, but it is the law which appoints him and invests him with the sovereign function in the interest of all his fellow citizens, whatever their political opinion or the region which they inhabit.” Thus D. de Smet de Naeyer, 4 May 1892, *Annales* [*Proceedings*], p. 1148.

“The object of the election consists in calling to public affairs the most capable and most accredited men, with a view to constituting the best possible government.” Thus D. de Brocqueville, 12 September 1899, *Annales [Proceedings]*, p. 2552.

“The right to vote is not exercised in the interest of the elector, but in that of society, which can, by that very fact, subordinate its exercise to the conditions which it judges opportune.

“And these conditions are necessarily variable and contingent: they depend upon circumstances, they depend upon environments, they do not, they cannot have an absolute character.

“Such indeed is the true notion of the electoral right. It is a function, a duty rather than a right.” D. Beernaert, 28 February 1893, *Annales [Proceedings]*, p. 799.

The earlier statements pleased all Catholics. As to that last statement concerning an office, since the speaker seemed to press it too far, it was properly corrected by D. Woeste, in the place cited above, who showed that acceptance is required in order that there could be question of an office properly so called and that there might be, as it were, a contract.

93. From what a correct judgment concerning some ordering of the right of suffrage is to be made. From the things said, these points are certainly established. In order that someone may weigh with certain judgment the various proposed methods of ordering suffrage, he must weigh many circumstances, and first of all those by which it becomes manifest what ordering gives greater hope of good administration. But once provision has been made for the common good, that ordering is to be preferred which will distribute more equally among the citizens that political authority which is contained in suffrage.

Whether, however, this is accomplished by that system which we shall call by its French name *proportional representation*, or by the constitution of equal districts to each of which one deputy is allotted (the single-member system), is a question which, according to our intention, we pass over in silence.

But what is to be said of those who contend that, without proportional representation, the truth of the representative government which we employ does not stand; or of those who, on the contrary, assail the same arrangement as contrary to Catholic principles concerning the right of truth and as infected with the plague of political skepticism?³

³ D. de Brocqueville raised this objection in the Belgian Parliament, *Annales Parlementaires [Parliamentary Proceedings]*, 1899, p. 2551.

We judge both parties to be in error.

The former, indeed, because, as was shown, the right of suffrage does not look toward deputies conducting themselves in the manner in which the entire people, or at least the whole body of electors, would conduct themselves if laws were enacted in assemblies. Furthermore, if it is not repugnant to a genuine representative government that very many citizens be destitute of every suffrage—as long prevailed in Belgium—how would it be repugnant that not all possess an equal right, but that they possess varying authority?

Someone will say: “Parliament must present an exact image of the electors.”

If you understand that *must* as an absolute necessity, we simply deny it. For first it is necessary that the constitution and manner of acting of Parliament conduce to the common good. But if you signify only a secondary fittingness, we shall concede it; yet you must then admit with us that it by no means pertains to the essence of the government.

As regards the latter, we certainly are not those who deny that there are certain principal truths which ought not to be disputed in a well-ordered society. And even when, as in present-day societies, the very great number of dissenters does not permit the rights of the true religion to be positively acknowledged, nevertheless we by no means doubt that at least those moral truths upon which human society rests must, as far as possible, be retained. Hence suffrages would rightly and deservedly be taken away from those who all but openly contrive the destruction of the present order.

All these things, I say, we freely concede; nor shall we deny that it can happen that the system of proportional representation is argued for in a manner which savors of heresy and political skepticism. But:

a) This is not the necessary rationale for defending that system. For if persons are designated in the elections, while no definition of matters is made, questions concerning the right of truth and the usurpation of error do not of themselves pertain here. For it can well happen, and sometimes does occur, that the opposing parties are both Catholic and patronize worthy candidates.⁴

⁴ Nevertheless, the method of suffrage recently adopted in Belgium, which took away from individual electors almost every choice of persons, brings it about that the contest is, as it were, necessarily concerning the "opinions" themselves, as they say today.

b) In a region where, no selection of opinions having been made, the right of suffrage belongs no less to socialists than to Catholics, by which they can prevail entirely in the commonwealth, this manner of ordering elections is perhaps more easily purged there than elsewhere of every appearance of skepticism.

For there all things are reduced to the mere distribution of legal rights already conceded; and the question is circumscribed by these limits: what, under the circumstances, seems more expedient.⁵

⁵ Thus, approximately, D. Vanden Heuvel, *Annales Parlementaires de Belgique* [Parliamentary Proceedings of Belgium], 1899, p. 2666.

II. SCHOLIA.

94. Concerning universal suffrage. We wish to say briefly how it is to be regarded.

1. Universal suffrage can reasonably be commended if the suffrage is to be cast concerning matters about which, according to the cultivation attained in society, all citizens can judge maturely; or at least if the less instructed in the commonwealth are judged ready to assent to the more expert who are worthy of trust. If these conditions obtain, that system does not lack its own advantages, since it is pleasing to the people to possess some authority, and under this government those who rule are more compelled to care for the good of the people and to comply with their honorable desires.

These two things are especially objected against the same system:

a) That in elections account is taken almost solely of number, with consideration neglected of the special interests toward which the various citizens apply themselves. Thus argue not a few who

defend what in French is called the representation of interests. Cf. Cathrein, *Philosophia Moralis*, no. 624.

b) That the minority is easily oppressed by the majority even when the former scarcely yields to the latter in number.

As correctives of these defects the following are praised:

a) **Plural suffrage**, by which more suffrages are attributed to those who seem to excel in knowledge or probity. Others object, however, that this greater power, which is said to be attributed to the foremost, already belongs to them by reason of the authority which those who excel in wealth, learning, and virtue connaturally possess over electors. Yet it cannot be denied that not rarely those rather prevail who are foremost in audacity and know by certain arts how to capture the favor of the common people.

b) The right conceded to the minority to designate some deputies. But the adversaries of this system reply that by those concessions made to minorities the government of the commonwealth is weakened and deprived of that strength which is necessary for procuring the common good.

We abstain from these controversies. Nevertheless, it cannot be denied that it accords more with nature, which made men of various ability and station, that he who prevails in skill, or to whose greater interest, on account of his fortune, it is that the commonwealth be well administered, should also be superior in the power of suffrages. Above all, however, the prerogative by which two or three suffrages are attributed to a father of a family is to be retained.

For not only do fathers of families seem *per se* to be preferred by far, in zeal for the common good, to younger men or to those who lead a celibate life; but, even if you aim merely at equality, the suffrage of a father of a family, as the virtual suffrage of the family—that is, of several persons—ought to have greater weight than the suffrage of an individual man.

95. You will ask why, when recourse is had to suffrages, that which has pleased the greater part is ordinarily made to prevail.

A twofold cause can be assigned:

1. Since it is not established who is superior in ability and counsel, and all who possess the casting of a suffrage are judged expert, that which more persons have judged should be preferred is presumed to be better and truer.

2. Since perfect agreement cannot be had, the greater part approaches more closely than the lesser to this agreement; so that, insofar as it can be brought about, the matter is administered in this manner according to the judgment of all.⁶

⁶ See how D. A. Fouillée attempts to solve the same question, *La philosophie du suffrage universel* [*The Philosophy of Universal Suffrage*], *Revue des Deux Mondes* [*Review of the Two Worlds*], vol. 65, pp. 111–113.

96. You will ask why the people, while electing magistrates, is to be regarded, more than other bestowers, as dispensing, as it were, its own thing.

For we gave this rationale above, no. 74, why the people in committing offices is not held by an obligation of distributive justice.

Reply. Because, in a democratic government, the whole people is regarded in some manner as the first subject in which public power inheres. This power is then attributed to others to be exercised by the consent and, as it were, in the name of the people, since the people cannot administer the commonwealth by itself.⁷

⁷ In this sense it is said in our fundamental law (art. 25), “All powers emanate from the nation.” By these words is signified what has in fact been done among us, or how the political government has been constituted among us, but by no means what must necessarily be done. Furthermore, the same rationale of the common good which demands that society be ruled by a few also demands that, within the limits of the power handed over, they possess an authority by no means subject to the judgment of the people. Therefore, the people cannot recall to itself the power which it conceded to the king and his legitimate successors, but is held by a formal or virtual compact which possesses full firmness.

Or, if you prefer, a certain first distribution is made by which all elective honors are attributed to the people in the manner which the common good permits. That manner is that they be exercised by persons who are acceptable to the people, provided that they are worthy.

Chapter II: The Justice to be Observed in Exacting Taxes

St. Thomas, *De Regimine Iudaeorum* [On the Government of the Jews]; Molina, vol. 3, disp. 661, 662, 666, 669, 674; Suárez, *De Legibus* [On Laws], bk. 5, chs. 13–18; Lessius, ch. 33; C. de Lugo, vol. 2, disp. 36; Cathrein, *Moralphilosophie* [Moral Philosophy], vol. 2, bk. 2, ch. 5, art. 3, §3; Cauwès, *Cours d'Économie politique* [Course of Political Economy], vol. 4, bk. 2, sect. 3; Wagner, *Finanzwissenschaft* [Science of Public Finance]; R. Stourm, *Système général des impôts* [General System of Taxes]; P. Leroy-Beaulieu, *Traité de la science des finances* [Treatise on the Science of Public Finance]; L. Cossa, *Scienza delle finanze* [Science of Finance]; Conrad, *Handwörterbuch der Sozialwissenschaften* [Concise Dictionary of the Social Sciences], s.vv. “Income,” “Income Tax,” “Inheritance Tax,” “Finances,” etc.; A. Garelli, *Le imposte nello stato moderno* [Taxes in the Modern State]; H. Denis, *L'impôt* [The Tax].

Article I. Preliminary Notions

97. What a tax properly is. In order that it may suffice for the various functions belonging to it from its province, social authority needs no small resources. According to the division already introduced by Adam Smith, who is regarded as the father, as it were, of economic science, it receives these either from its own goods or industry, or from the fortunes of the citizens. Its own goods are of various kinds, such as lands, forests, mines, and monopolies which social authority exercises by itself or through others; and they are sometimes called the fiscal domain of the State (if the State is in question), in order that it may be distinguished from the public domain, which embraces those goods which, being in the possession of no private person, are destined for public and non-lucrative uses: thus squares, public roads, and public gardens.

For a long time, certainly in many regions, political authority was able to meet public expenditures from the revenues of the fiscal domain. Hence in France permanent taxes began to be exacted together with the levy of a permanent army—that is, in the year 1444—and in England they were unknown before the seventeenth century was ending. Today, in the Principality of Monaco, we still have an example of sufficiently complete immunity, since the concessionaires of games must suffice

for almost all expenditures. But this is a singular exception; and the common rule now holds that by exactions by far the greatest part of the public treasury is amassed.¹

¹ Economists by no means disapprove this. Indeed, they rather judge that, if you except a few heads, such as the coining of money, in which a public cause for monopoly intervenes, it contributes to general prosperity that the State alienate these goods. Cf. L. Cossa, *op. cit.*, sect. 3, pt. 1, ch. 3.

From the fortunes of the citizens, however, the State exacts contributions which are of two kinds. Some are paid by those to whose advantage some action or work of public authority immediately redounds, so that they may compensate the expenses made for their own benefit. Of this kind is the money to be given by those crossing bridges and navigating through rivers and canals, etc., so long as it does not exceed what the public treasury had to expend. These contributions are called in French fees and tolls.

Others are imposed upon citizens without an advantage of this kind immediately received: these are taxes properly so called.

Materially, therefore, we can describe taxes or imposts as: Things estimable at a price, or—since in our regions this is now almost their sole form—monies which citizens are bound by law to furnish or pay, without an immediate relation to their private advantage, but so that public expenditures may be met.

In some revenues which the State receives, a twofold or even threefold rationale can inhere. Let us consider, for example, the administration of justice. It is a matter which concerns the common good and which at the same time, where a civil suit is conducted, redounds to the special advantage of certain persons. Hence the expenses are fittingly furnished in part by those who were the cause of the suit, and in part by the universal community. And in actual fact, the monies to be paid by litigants do not equal those which the treasury must expend to appoint judges.

Similarly, when the State administers railways and the conveyance of letters, etc. (the postal service), it can seem to exercise a profitable industry, or to provide for public utility through an office which nevertheless benefits certain persons particularly. Therefore, if those who, for example, are carried by railways pay scarcely that which corresponds to the expenses, this money is rather to be regarded as a fee. But if the State makes a profit from this administration, the same money can be regarded either as a price properly so called, such as would have to be paid to some private society, or as a tax. And it will certainly be a tax if the public charge exceeds the price which a private person could ask. In this manner the treasury in France exercises the tobacco monopoly (the tobacco administration).

98. Various less principal notions which pertain here.

Within taxes are distinguished the *basis* (the base), the *assessment* (*status*; the assessment base), the *apportionment*, and the “*incidence*,” which many divide into direct and indirect. The latter, following de Parieu, they call the shifting (repercussion, reflection) of the tax.

Although these terms are not understood in the same manner by all, their proper force nevertheless seems capable of being indicated precisely thus:

The *basis* is every thing (in the broad sense) upon which a tax is imposed—for example, servants, furniture, salt.²

² Taxes upon servants, furniture, and salt.

Sufficiently akin to this is the rationale of the *assessment*. For the assessment of a tax designates either the very manner in which a thing is subjected to a tax, or the very placement of the tax upon some basis; or also, objectively, the very resource upon which the tax is directly imposed. Accordingly, if taxable revenues which were previously estimated from presumptions are now defined by direct inquiry, the assessment of the tax is changed according to the former signification of the word. But according to the latter signification, for a tax whose basis is beverages, its assessment will be partly their production, partly their sale. These activities produce wealth. Similarly, prospective profit (commercial profit) is the assessment of the tax which is exacted from one practicing a trade or commerce (the business-license tax).

Apportionment is the rationale by which the burden of individuals is defined.

The *incidence* of a tax, according to the more common opinion, is its fall upon the person whom it burdens. Since, however, not rarely the one from whom the tax is sought is not the same as the one who bears the burden, there are some who call *direct incidence* that which falls upon the person who immediately pays the tax—for example, upon the merchant who discharges the fee for a license to conduct business (who pays the business-license dues); while *indirect incidence*³ would be that which falls upon him who, although he contributes nothing to the treasury, is nevertheless burdened in reality. In the example adduced, this will be the purchaser of the merchandise, if a proportionate part of the aforesaid tax to be paid is computed in the just price. Others call the former incidence *legal*, and the latter *real* (effective).

³ The doctrine concerning indirect incidences was not unknown to Molina, disp. 667, no. 7, and disp. 669, no. 2, nor to C. de Lugo. Cf. vol. 2, disp. 36, no. 25.

Concerning incidences, overly absolute opinions were published by writers who contended that they assigned to each tax its own true incidence, while now there is sufficient agreement that the matter is very intricate and obscure.⁴ In general it can be said that the burden is borne by him against whom is the law of what is offered and demanded (the law of supply and demand), or by him in whose power there is less discretion concerning the price, because he is pressed by a greater necessity of completing the contract. Thus, if you are compelled to sell a house in order to pay a debt, the burden of the tax to be paid on this occasion must be sustained by you rather than by the buyer. For even if he is held by civil law to certain expenses, he will deduct these from the sum which he determined to pay as the price. On the contrary, one who manufactures things (the manufacturer) is not rarely able to transfer the tax to the buyers.

⁴ “Its real incidence exceeds the visible limits of its assessment and is distributed in a thousand ways, without it being possible to follow its movements exactly.” Stourm, op. cit., Preface. “The shifting, undoubtedly most intricate, is erroneously appraised by many theorists.” L. Cossa, op. cit., sect. 3, pt. 2, ch. 5.

N.B. Shifting does not take place immediately, but an interval is necessary. From another quarter, because of the various shiftings which take place, provided the tax system has been sufficiently complex, economists judge that the matter is, as it were, composed of itself in such a way that all pay taxes in equal proportion. Hence that rule, to which theologians consent, though for another cause:⁵ that the tax system is not changed without danger; and that the more ancient taxes are, the more just they are. I would prefer to say *per se*, for neither can this be understood too absolutely. Cf. Cauwès, no. 1240.

⁵ For ancient taxes appear to theologians to be adorned with a presumption of justice. Cf. St. Alphonsus, bk. 3, no. 617. And perhaps they took this from ch. *Pervenit* 5, *De Censibus* (III, 39), where, however, antiquity merely establishes a presumption of a legitimate cause, which otherwise would have to be proved by the collector.

99. Divisions of taxes.

a) **According to the performance which is exacted**, a tax which is to be furnished through some work of the person himself⁶ is distinguished from one which is to be paid from goods.⁷ Today money must generally be furnished. The former kind could be called *personal*, the latter *real*; but cf. below the other acceptation of these words which is more commonly used today.

⁶ Personal services, such as formerly were compulsory labor services (*corvées*), and as are still now the obligation of military service, of lodging soldiers, etc.

⁷ Payments from property.

b) **According to the basis and assessment**, they distinguish:

a) **A direct and an indirect tax.**⁸ We shall hand down the notion of these expressions which pleases jurists, for economists disagree. Moreover, according to our laws, a direct tax is one which, after individual intervals, is exacted from a person designated by name;⁹ while an indirect tax is any other tax.¹⁰ Cf. Cauwès, op. cit., no. 1229.

⁸ Cf. Cauwès, no. 1229. Concerning the scientific origin of the distinction, cf. H. Denis, *L'impôt* [*The Tax*], p. 346.

⁹ For example, the land tax, the tax upon rental value, the business-license tax.

¹⁰ For example, inheritance duties, and especially duties upon production, customs duties, or duties upon consumption.

β) **A personal tax and a real tax.** A personal tax reaches a person either insofar as he is a citizen—thus an equal or simple exaction upon heads (simple capitation)—or insofar as he has a certain measure of resources.¹¹ A real tax, on the contrary, directly reaches a determinate possession or industry, insofar as it is to be paid, without regard to resources, by any possessor of the thing, merchant, etc. It can be imposed upon possessions and upon the production of things;¹² upon their movement or transfers (upon circulation);¹³ and upon their consumption. Cf. H. Denis, *L'impôt* [*The Tax*], pp. 71–76; Cauwès, no. 1229.

¹¹ The tax upon the totality of incomes.

¹² The land tax, the tax upon capital, and the tax upon industrial profits.

¹³ Duties upon transport, customs duties, and transfer duties.

γ) **A tax is called sumptuary** when it is imposed upon things pertaining to luxury; its end can also be to restrain excessive luxury. Taxes upon alcohol and harmful drinks are reduced to this class.

c) **According to their apportionment**, there is a tax whose total to be obtained by the treasury is directly determined, toward which the proportional share of each individual is then exacted (tax by apportionment); and a tax concerning which it is directly established what part of his goods each person must pay, so that the total collected can vary. This latter method, which is more perfect and today nearly universal, is called in French a *rate-based tax*.

d) **Finally, according to the manner in which what is to be paid is determined**, the assessment of some taxes is made directly, whether from the declaration of the subject, from the judgment of

officials, or from both together; the assessment of others, on the contrary, is made indirectly from indications or presumptions. In Belgium, the land tax offers an example of the former method; the personal tax, of the latter. Cf. below, no. 102, **a** and **b**.

100. Quantity of taxes.

They agree upon this rule: except in a necessity of a higher order, a tax ought in quantity to remain below the total income, lest society otherwise be reduced little by little to poverty.

Hence, although there are many bases, income is called the sole subject matter capable of bearing taxation;¹⁴ and, according to the portion of the proceeds consumed in paying taxes, these are called heavy or light.

¹⁴ “The only taxable subject matter is income.”

Yet you should not therefore think that a tax must be directly imposed upon incomes alone. Indeed, there is in force a tax which is called one *upon the principal* (capital), on account of the method of taxation by which the principal rather than the income is considered.

Without common detriment, however, something can be taken from the principal of an inheritance to be divided among collateral blood relatives, since those goods then accrue to plainly distinct patrimonies. (Heirs in the direct line rather preserve the same patrimony as the predecessors from whom they receive the goods.)

The weight of taxes, however, is not to be assessed from their quantity taken absolutely by itself; rather, the resources of society and the benefits procured through the taxes must be considered. Thus, for example, although the taxes of France today exceed sixfold those which were exacted in the year 1789, they concede that the citizens are no more burdened now than a century ago. Cf. Denis, *op. cit.*, p. 39; Cauwès, no. 1226.

According to Leroy-Beaulieu,¹⁵ the burden of taxes is *light* when it does not exceed one-twentieth (5 or 6 percent) of the incomes received; it is *moderate* when approximately 8 percent is exacted; *heavy* when it exhausts one-tenth of the incomes; *immoderate* when it exceeds 14 percent.

¹⁵ *Op. cit.*, bk. II, ch. 1. Observe that in this computation incomes are taken according to their absolute amount (gross income), and not after necessary expenses have been deducted (net income).

Accordingly, the burden of taxes is thought light in Belgium¹⁶ (5–6 percent); moderate in England (8½); heavy in France (11½–12); almost immoderate in Italy (14 percent).

¹⁶ D. Denis nevertheless considers taxes to be relatively heavier in Belgium than in the year 1831.

101. Various systems of taxation.

a) Certain rules for exacting taxes are handed down which are drawn from morals, the good administration of the commonwealth, and economic utility.

The *moral rules* reduce to this: that taxes be imposed by legitimate authority, in view of the common good, and be apportioned among citizens in an equitable manner; then, that they favor neither vices nor frauds. If vices can in some manner be restrained through certain methods of taxation, this benefit is not to be neglected. It is not established, however, that taxes have much efficacy for this end.

The **political rules** require taxes: a) which suffice for expenditures and are conveniently adapted to their variety; b) whose collection is easy and not hateful to citizens.

The **economic rules** require that taxes harm the temporal prosperity of society as little as possible.

b) Come, then, the systems of taxation vary:

a) **According to the number of bases:** for some commend taxes of a single kind which directly affect proceeds;¹⁷ while others prefer various kinds of exactions. The latter argue especially from political rules, while the former praise the simplicity and greater justice with which, under a single system, the total burden is distributed among the citizens.

¹⁷ A general tax upon income. Taxes in the broader sense (fees) would nevertheless be retained, as would any which perhaps became necessary for a higher rationale of protecting morals or industries: such as certain sumptuary duties and some customs duties.

Yet the assessment of incomes is a very difficult matter, which provides occasion for many errors. Hence that celebrated simplicity appears rather fictitious, and it is permissible to doubt the greater justice.

This is certain: today taxes everywhere are too great for a single method of taxation to be possible; it is altogether necessary to conceal their weight by various and especially indirect exactions. Cf. the Scholion, no. 117.

β) **According to the portions assigned to direct and indirect taxes.** Direct taxes excel in simplicity, certainty, and the lesser expense with which they can be exacted; and, moreover, in them the rationale of distribution is less arbitrary. Indirect taxes, however, are more productive and are borne more lightly.

An apt combination of both kinds therefore appears to be advisable.

γ) **According to the formal rationale of distribution.**

For this changes according as there is a greater abundance of real or personal taxes, and according as the proportional share to be paid is established as the same for each person or as greater for the wealthier (the proportional and progressive system).

102. Principal characteristics of the prevailing system.

Everywhere taxes are established with great variety and by a rather empirical method: some direct, others indirect; some real, others personal. And personal taxes are for the most part still commanded of citizens uniformly in proportion to their incomes; in certain regions, however, the proportional shares to be paid already increase in some manner according to the means of each.

Yet how not merely the share but the very total of the taxes exacted from each individual is to be related to the unequal capacities of incomes is still altogether uncertain. The very multitude of taxes obstructs this computation.

In Belgium, for example, the following are exacted:

a) **The land tax** (*contribution foncière*), which, from a cadastral assessment,¹⁸ is to be paid by the owner on account of lands or houses possessed.

¹⁸ In French, *le cadastre* designates the catalogue of all landed properties.

b) The tax which is called personal (*contribution personnelle et mobilière*). It is based upon the rental value of the house, upon doors and windows, upon the value of movable furnishings, upon servants and horses,¹⁹ insofar as all these things are presumed to be signs of income. For incomes are the true assessment-base of this tax.

¹⁹ Formerly, until the law of 26 July 1879, it was also based upon hearths.

c) The tax which is called the business-license tax (*la patente*), and is to be paid by one practicing certain crafts or industries.

Thus far, concerning *direct* taxes. *Indirect* taxes, however, are:

d) Taxes upon the manufacture, movement (circulation), **and consumption of finished things** (products). The duties by which consumption is burdened are called *excise duties*. Movement is burdened through customs duties. Hence, more generally, the terms *customs and excise duties* designate these indirect taxes.

e) Taxes upon inheritances (inheritance duties).

f) The tax which takes its name from the public stamp with which paper destined for certain uses must be imprinted (stamp and posting duties).

g) Taxes which are paid in sales and exchanges of things (transfer duties).

h) A tax contained in certain monopolies (state administration, monopoly). For it is a tax insofar as it deprives citizens of the faculty—estimable at a price—of practicing certain crafts, and insofar as not rarely more must be paid than the common price. In Belgium we have the state administration of the posts and of gunpowder. Elsewhere, for example in France, tobacco and matches also are reserved to the treasury.

How greatly indirect taxes exceed direct taxes in their importance will be sufficiently apparent if you consider that, during the year 1899, the treasury received 50,795,325 francs from direct taxes and 411,200,252 from indirect taxes.

In not a few other regions, together with exactions similar to those of Belgium, a general tax upon incomes is now in force, in which a certain method of increasing progression is generally observed, besides the immunity conceded to modest fortunes. Thus in England (Income Tax), in Austria, in Prussia (*Einkommensteuer* [income tax]), in Switzerland, in Italy, etc. Those taxes, however, are subject to various interpretations, so that those who oppose the progressive form²⁰ contend that in these there is almost nothing contrary to their position.²¹ Besides, if you except Italy, where 12 or 13 percent is exacted, this method of taxation remains within very mild limits, so that no one must pay more than 4 or 5 percent.

²⁰ For the sake of brevity, henceforth, in designating present-day systems, we shall use the modern appellations *proportional system*, *progressive system*, etc.

²¹ Cf. Cauwès, no. 1267 c.

To one considering the laws in force in various regions, it becomes clear that in most, as in Belgium, the method by which burdens are divided between movable and immovable goods is far from equality. For a special tax is imposed upon immovable goods and their transfers, while the certificates—shares, bonds—by which one has a part in commercial companies, etc., are transferred with almost

no burden. Many deservedly deplore this and complain of it; except that, because of the difficulty of assessing how much each person possesses in money or securities, the correction of this defect presents no slight difficulty.

Article II. Entrance into the Controversy

103. Matters to be treated. In the question of taxes, which is still involved in many doubts and controversies, we direct our attention to the rationale of justice, which belongs to us; but we omit or relegate to the scholia those things which pertain more to political and economic sciences. We examine, moreover, a twofold point: **1.** By what title a tax is owed and of what nature that burden is. **2.** What the just method of its distribution is.

Finally, in the subordinate little questions, we shall treat specifically of the obligation of undertaking military service, and we shall weigh more accurately what obligation in conscience the present-day tax laws produce.

104. Various opinions.

1. Concerning the former question, the Scholastic doctors had no doubt. With one voice they hand down that a tax is understood to be that which subjects, or members of the commonwealth, contribute for the common utility and public necessities.¹

¹ Cf. C. de Lugo, vol. 2, disp. 36, no. 1.

On the contrary, among those more recent writers who are altogether unversed in Scholastic principles and do not borrow rules from the theologians, there is a marvelous variety of opinions.

If you ask concerning the nature of the debt, some who favor liberal economics contend that it is a real burden which therefore immediately affects goods, so that citizens are formally obligated as possessors of a certain quantity of goods.² The opinion according to which it is an obligation of the person nevertheless prevails.

² Ginoulhiac professed this theory precisely—which ought to please those who advocate the proportional system: “The tax is not a burden, but a part of the products granted to the State by virtue of its cooperation.” For this opinion Cauwès (no. 1219) adduces Ménier, V. de Broglie, and Yves Guyot.

If you attend to the end toward which it is to be ordered, the system of taxation is placed by state socialists among the means by which they pursue a greater equality of fortunes. For the Hegelians, on the contrary, who conceive the State as a certain abstract being existing ultimately for its own sake, *Selbstzweck* (an end in itself)—to whose party many German economists, such as Wagner, in some manner incline—taxes are part of the worship owed to that divinity and have its good for their end.

Others, finally, being more solicitous concerning the title by which a tax is exacted, indicate that the source of the obligation is a contract. For them a tax is either the price by which the various benefits which the State procures for them are purchased by the citizens, so that there is here a mere exchange of services—thus Bastiat—or an insurance premium for the juridical protection of goods. Thiers, after Mirabeau, seemed to defend the latter.

Yet there are among them some who approach us with a more obscure formula. Thus Cauwès, no. 1218.

2. As regards the other question, the Scholastic doctors employ this principle: payment must be made according to one's means, but they do not define the matter more precisely. Cf. Molina, vol. 3, disp. 668, no. 1; Lessius, ch. 33, no. 6; C. de Lugo, vol. 2, disp. 36, no. 23.

A very great controversy has arisen among more recent writers concerning the method or form of just distribution.

Two things, however, must especially be observed:

a) In this place, it is a question of that form which would shape the entire total of taxes and not merely some portion of them. For the fact that some taxes are constituted in a progressive form can also please those who embrace the cause of the proportionalists, if they wish in this manner to compensate for the inequality by which common people are thought by not a few to be burdened more than others by indirect taxes.

b) Moreover, the very form which appears preferable can be introduced by the direct means of a tax which would affect proceeds alone, or by indirect means, by aptly tempering the variety of taxes according to that form.

Come, then, in order now to arrange the various and diverse opinions: there have been some who established this rule, that *each person ought to pay more in proportion as he had a greater share in the common goods*; this rule is to be rejected altogether, since it both requires an assessment subject to excessive difficulties and perhaps appears likely to bring it about that the burdens of the poor are greater than those of the rich.³

³ Cf. Cauwès, no. 1220, at the end.

But while readily admitting this, not a few others at the same time consider that the shares which each person has in the common goods can be presumed to correspond uniformly to the quantity of private riches. Hence, from Adam Smith onward, another method gained currency among all those who are followers of the liberal school: they teach that *a tax is to be measured according to the resources of each person in such a manner that the same portion of income is exacted from each*. Nor, however, do they forbid that those who are pressed by true indigence be relieved from every burden from a certain compassion, or that, by way of reward, less be exacted from the fruits of one's own labor, provided that many goods are not thus exempted from the common law.⁴ That system, to which the French name *proportional tax* has been given, is defended by them as though it alone rested upon a certain and definite rationale and alone warded off the danger of an inequitable exaction or one made by chance and rashly. D. Cauwès also adheres to it, as do several Catholics, such as D. Périn.

⁴ By these marks the system which in French is called *degressive* is distinguished from the system called *progressive* (Leroy-Beaulieu, *Traité de la science des finances* [*Treatise on the Science of Public Finance*], p. 180).

The socialists, on the contrary, cry out with one voice that *so much greater portions of incomes are to be exacted from individuals, the greater the totals of their incomes are*, so that the resources of the citizens may in this manner be reduced to equality.

They are also the most ardent advocates of placing a single tax upon incomes.⁵

⁵ A general, single, and progressive tax upon income.

Moved by a far different rationale, not a few of the Catholic writers who reject the opinions of the liberals think burdens are distributed more equitably if, *as each person is wealthier, a moderately greater portion of his proceeds is exacted from him*. Examples are Taparelli,⁶ Liberatore,⁷ and Rev. Fr. Cathrein, S.J.⁸

⁶ *Saggio teoretico* [Theoretical Essay], no. 1178.3, in the note.

⁷ *Principi di economia politica* [Principles of Political Economy], pt. 3, ch. 3, art. 4.

⁸ *Moralphilosophie* [Moral Philosophy], vol. 2, p. 566 in the second edition; p. 627 in the third edition.

A similar method is approved by most German writers, such as DD. Wagner and Schaeffle, who contend that this must be attempted: that the burdens be felt equally by all.⁹

⁹ “The tax must be based upon equality of sacrifices.”

That system, which by a French name is called a *progressive tax*, long ago obtained classical patrons in France: J. B. Say¹⁰ and Courcelle-Seneuil.

¹⁰ “I shall not fear to pronounce that the progressive tax is the only equitable one.” *Traité d’économie politique* [Treatise on Political Economy]. Cf. also the others cited by Cauwès, no. 1221.

Yet of those who do not wish the portions of taxes to correspond uniformly to portions of proceeds, very many do not disclose their opinion more fully. Hence this is explained by not a few, especially by adversaries, as though the ratio of increase itself must be constant and perpetual. Accordingly, for example, 3 percent would be exacted from an annual income of five thousand francs, 4 percent from ten thousand, 5 percent from fifteen thousand, and so on, so that after certain progressions the entire amount of incomes would consequently have to be consumed.¹¹

¹¹ Another form of progressive tax has also been invented, by which incomes indeed would not be consumed entirely, but would nevertheless be prevented from increasing beyond a certain total. It was proposed thus by Prof. J. W. Newman.

But not very long ago, another method of progression began to be proposed which could never exceed a moderate rate of taxation. Different forms are proposed by different persons.

There are some who define a few classes of incomes, whose burdens gradually increase indeed, but are the same within the class, whether you have more resources or fewer. The exaction is therefore uniform—proportional—for incomes of the same class, while the burden is not too heavy for any class, not even the highest.¹²

¹² In French, this system is called: *système de la progression rationnelle limitée* [system of limited rational progression]; *système progressif* [progressional system] (Joseph Garnier); *impôt progressif par tranches* [progressive tax by brackets].

Finally, they distinguish incomes themselves either according to origin or according to function or connatural destination.

According to origin, insofar as the income of one’s own labor is burdened with a lesser tax than the income of goods acquired by inheritance; momentary (temporary) income less than stable income; etc. Cf. H. Denis, *L’impôt* [The Tax], pp. 100, 122, 128, 129.

According to function, insofar as, whatever the total amount of the patrimony may be, the first portion of income, from which sustenance is to be procured (*Existenzminimum* [subsistence minimum]), is established as altogether or for the greater part immune from every burden; then the second portion, which is thought destined for almost necessary expenses, sustains a lesser burden

than the third, which is of secondary utility; and this last, in turn, a lesser burden than that kind which can commonly be said to pertain to opulence. From this kind a contribution of one-twentieth or one-tenth would be sought.

The Income Tax of England is of approximately this character, and the systems which obtain in several parts of Switzerland do not differ greatly from it.

The following form of the proposal, in which the additions to the tax continually

| Income | Tax | |---:|:---| | 1–100 | 0 | | 100–1,000 | 3 percent upon the portion possessed beyond one hundred, that is, upon 900. Accordingly, 27 francs will be paid. | | 1,000–2,000 | 4 percent upon the portion beyond 1,000. | | 2,000–3,000 | 5 percent upon the portion beyond 2,000. |

And so on, so that with each new increase, in amounts up to one thousand francs—or shillings—a tax greater by one percentage point is commanded. In this manner, the total effective amount of income could never exceed 47,533.

For:

$$27 + (4 + 5 + \cdots + 99) \times 10 = 27 + [(103 \times 96) \div 2] \times 10 = 27 + 49,440 = 49,467.$$

$97,000 - 49,467 = 47,533.$

Cf. Bastable, *Public Finance*, bk. 3, ch. 3, p. 29, second edition. increase indeed, but by always smaller increments, appears more scientific, though in reality not dissimilar; so that the tax of each citizen tends toward a portion of income which is called the maximum: whether that movement reaches this portion and rests in it, or always approaches it more closely, as a mathematical limit, and does not arrive at it.¹³

¹³ In French, you would say it briefly thus: The taxation is progressive, but the progression of the rate decreases more and more, either so as to disappear and give way to a fixed maximum rate, or so as to approach this maximum indefinitely as a mathematical limit toward which one always tends without ever attaining it. Cf., at the end of this chapter, the diagram from which it appears at the same time that these differ little from one another in practice.

This will become clearer from a proposed example.

Total income Portion to be paid	
1–1,000 francs	0
1,000–3,000 francs	1–3 percent
3,000–5,000 francs	3–5 percent
5,000–7,000 francs	5–6½ percent
7,000–9,000 francs	6½–7¾ percent
9,000–10,000 francs	7¾–7 9/10 percent
10,000 to infinity	7 9/10–8 percent

That system, which Leroy-Beaulieu considers should be neglected, nevertheless already has several patrons among economists. He himself indicates writers of Holland and, besides them, Seligman, *Progressive Taxation in Theory and Practice*; Emil Sax, professor at Prague, *Die neuesten Fortschritte der nationalökonomischen Theorie* [*The Latest Advances in Economic Theory*].

It will be helpful to place the various opinions precisely before the eyes in the French idiom:

1. Systems of uniform rate:

- a) Pure proportional tax.
- b) Tempered by a degressive combination.

2. Systems of differential rate:

- a) Progressive tax at a constant ratio, adopted either to make the socialist ideal prevail or to equalize sacrifices.
- b) Progressive tax by brackets, proportional within each bracket, and stopping at a moderate maximum rate. (Mixed system.)
- c) Continuous progressive tax, but with progression that becomes slower and slower; tending indefinitely toward a moderate limit, and before long becoming appreciably indistinguishable from the proportional tax.

To these last two systems the recent epithet *progressional* is applied.

Article III. Formulation and Arguments of the Conclusion

THESIS VII

Taxes are not a real burden immediately imposed upon goods, but correspond to the personal obligation—by which citizens are bound from legal justice—of contributing from their own possessions to the common good.

The perfect method of distributing taxation, however, which must be approached as closely as possible but prudently, is not that portions of tax uniformly correspond to portions of proceeds, nor that they increase according to each person's means, by a constant law, according to an arithmetical or geometrical proportion; rather, the perfect method is that which, proceeding as a sort of mean between the two, rests upon the various functions of proceeds.

105. Scope and division of the thesis. In the former part of the thesis, against a few, we defend the more common opinion concerning the species of the obligation to pay a tax, according to which it is considered a burden not of things but of persons. In the latter, we first admonish that one must strive truly but prudently toward the perfect ordering of taxes, insofar as opportunity is given and the procurement of the common good permits it; we then place the perfect method in the system which we sketched in the last place. We distinguish the classes of incomes, however, by function rather than by origin.

First Part.

106. I. THE TERMS ARE EXPLAINED.

Taxes: those properly so called, which are distinguished from the various fees by which citizens compensate for benefits obtained.

Are not a real burden immediately imposed upon goods: for this is the proper characteristic of a real burden, that it affects a person on account of a thing.

But correspond to a personal obligation: here we understand as *personal* an obligation which, even if perhaps—as not rarely happens—it must be fulfilled by a real performance, nevertheless directly affects the person, and things insofar as they pertain to the person.

By which citizens: by this name we here address the members of a community which is governed by its own laws.

Are bound from legal justice: this, therefore, is the formal title of the obligation.

To contribute from their own: that is, from those things which are ordered to their own utility, such as their own labor and especially their own fortune.

To the common good: that performance, therefore, is a certain positive and due method of cooperating toward the common good.

107. II. PROOF.

Argument 1. For by paying taxes, citizens procure the common good through a suitable means imposed by law: for they supply the lack of the treasury, so that there is commonly at hand that from which public expenditures may be met.

But. Citizens are bound by a personal obligation of legal justice to procure the common good through suitable means prescribed by law.

Therefore. The former conclusion of the thesis positively stands.

Alternatively: the obligation to pay taxes corresponds to the right of exacting them; political authority exercises this right in the name of the community as such.

But. The proper right of the community is adequately answered through legal justice, whose offices are proper to the members. **Therefore.**

Argument 2. The obligation under discussion is either personal, as we have described it, or it is a real burden. This major of the dilemma is not disputed.

But. It is not a real burden. **Therefore.**

Proof of the minor. a) A real burden cannot be understood without a right in the thing belonging to political society over the goods which are said to be burdened. But whence would that right arise? Will you say that, by the very fact that citizens possess or produce certain goods, immovable or movable, a proportional part of those goods immediately pertains to fiscal ownership? Who would not see how gratuitous and how strange an utterance of this kind would be? Or will you rather explain the matter in this manner: that citizens, by the very fact that they enter political society, are considered to bring all their fortunes into the common stock in order to form a common mass (social capital), henceforth belonging to the State, which, by imposing a tax, would thus appear to gather some fruits of its own field? This manner of speaking seems in fact to have pleased some; but it is repugnant to the true notion of perfect society, which is a society not of monies but of persons.

b) If the burden were real, goods would be affected by taxation without respect to the patrimony to which they pertain. It would be foreign to consider by what debt their owner is bound; rather, all

taxes would have to be strictly real—in the sense explained above, no. 99, **b**—which nevertheless all economists reject with one accord as contrary to distributive justice.

108. III. DIFFICULTIES.

1. Even foreigners pay taxes. Therefore. The obligation is not proper to citizens. Thus Cauwès.

Reply. a) Indirectly. Foreigners also are bound by certain other laws. Therefore, if the difficulty proved anything, it would have to be denied that the duty of obeying laws is a personal obligation of citizens.

b) Directly. I distinguish the antecedent. Under the same title as citizens, I deny; under another title, I pass over: for they do not bear all taxes.

They are bound to taxes insofar as, for example, on account of the goods which they possess, they participate in certain benefits of the administration of the realm, whence it is equitable that they participate also in the burdens; or insofar as, upon this just condition, they are admitted to possess goods or practice commerce. Therefore, in reality, what they pay assumes more the rationale of a certain fee. Finally, since this is done universally, there is also a certain compensation among nations. Cf. this difficulty already solved by Molina, vol. 3, disp. 668, no. 2 and disp. 669, no. 3, and by C. de Lugo, vol. 2, disp. 36, no. 28.

2. An objection could be made from the other opinions which we recited above, no. 104.1, and did not directly refute in the proof itself. In order to refute them precisely:

a) If you say that a greater equality of fortunes is to be pursued through taxes, we reply that, on account of the disparity—which we admit appears excessive to not a few—an invasion by the State into private dominions in order directly to restore equality cannot be permitted, as the state socialists would wish; especially since the evil would by no means be rooted out radically in that manner. Rather, through opportune social laws, unjust increases of fortunes from usury, fictitious speculations, certain monopolies, etc., are to be prevented. Cf. *Rivista Internazionale* [*International Review*], 1896, pp. 190–192.

b) The Hegelian conception falls together with the idol itself, namely the State, which is proved to exist not for its own sake but for the common good of men.

c) The obligation of taxes cannot be reduced to a contractual obligation, as others wish, unless you follow the error of the social contract. Moreover, the obligation would then be one of commutative justice with the burden of restitution; and that citizen who deservedly complained that the commonwealth had been administered badly, at least in relation to himself, would now owe nothing. Who would approve these consequences?

d) If, in order that we may come to the special explanations, you consider the contract as an exchange of benefits, the burden of each individual will have to be determined from the benefit received. Yet taxes are owed to pay lavish expenditures—prodigalities—or on account of an activity which redounds to the indivisible utility of all: for example, on account of the public administration of justice, etc. How would you assess what has fallen to each person in these things? Cf. Cauwès, no. 1228.

e) If you say that insurance of goods—an insurance premium—is compensated by taxation, you will wrongly have reduced the function of political authority to the protection of rights alone. Moreover, whatever damages proceeded from private injuries would then have to be repaired from the public treasury. Cf. Cauwès, loc. cit.; H. Denis, pp. 66–71.

Second Part.

109. I. THE TERMS ARE EXPLAINED.

The perfect method, or that which corresponds exactly to the principles pertaining here and handed down above concerning both kinds of justice, legal and distributive. In French you would call it *the ideal*.

Of distributing taxation. Having relegated to the Scholia the question concerning the just quantity which can be imposed upon the citizens taken together, we restrict the matter to be disputed to distribution. We always posit, however, a society of equal citizens, such as now obtains everywhere.

Which must be approached as closely as possible but prudently. By these words, besides the obligation of striving toward this perfect method, we inculcate that it is lawful, for a public cause, to depart from the perfect method. We establish a rule which is to be applied insofar as it can be done prudently. Accordingly, we preferred to say *perfect method*—the ideal—rather than *just method*. For a less perfect system which is lawfully retained cannot be accused of injustice.

But if it is lawful sometimes to take less account of the method which is in itself more perfect, it will be much more lawful to set aside certain means which are in themselves more suitable and efficacious but which do not appear capable of being employed without a prevailing detriment to the common good.

Is not that portions of tax uniformly correspond to portions of proceeds. By these words we describe the proportional system.

Nor that they increase, according to each person's means, by a constant law.... These words designate the progressive system as it is commonly understood and in fact advocated by socialists.

According to an arithmetical or geometrical progression. For the form of progression which we reject can be conceived in two ways, as is evident from these two examples:

Arithmetical progression: income	Portions to be paid	Geometrical progression: income	Portions to be paid
1,000 francs	1 percent = 10 francs	1,000 francs	1 percent = 10 francs
3,000 francs	2 percent = 60 francs	2,000 francs	2 percent = 40 francs
5,000 francs	3 percent = 150 francs	4,000 francs	4 percent = 160 francs
7,000 francs	4 percent = 280 francs	8,000 francs	8 percent = 640 francs

Rather, the perfect method is that which proceeds as a sort of mean between the two. It is a mean because it concedes something to each of the opposing opinions, and because, according to the

definite manner in which it is understood, the two forms are mingled to a greater or lesser degree.

Rests upon the various functions of proceeds. Here we designate the kind of distribution which we described at the end of the preceding article. There is indeed no single manner of conceiving it. We handed down several above, among which we leave a free choice, especially since the practical difference is not so great. We judge, however, that an apt distinction of incomes is to be drawn not from origin but from destination. Hence by this positive mark we designate the form of distribution which we judge preferable.

110. II. THE FORMER MEMBER OF THIS PART IS PROVED.

The perfect method of distributing taxation must be approached as closely as possible but prudently.

For on the one hand, a legislator who neglected the perfect method of distributing taxation would be an inequitable distributor of taxation and would offend against commutative justice; on the other, the necessity of the common good demands in this matter moderations which are employed by public power without any injury to the citizens.

Therefore. One must indeed strive toward the perfect method of distributing taxation, but only insofar as it can be done prudently.

Each assertion of the antecedent is proved.

a) The perfect method is said to be that which corresponds to equal distribution. Justice of itself, and indeed commutative justice, requires equal distribution. For it is established from the preceding thesis that equal distribution is demanded by distributive justice; that inequality is also opposed to commutative justice is evident from the fact that public power, while exacting from some a greater portion of tax than equitable distribution allows, would despoil citizens of their own goods without title or right.

b) Besides the fact that, on account of various shiftings, inequality can already be corrected, or even compensated by the many benefits which the wealthier furnish to the commonwealth, a system once received by custom is not changed without danger of protests and disturbances and therefore of detriment to the commonwealth. Add the still-fervent controversy concerning the truth of the proposed doctrine and the many difficulties which surround its execution; and you will easily perceive why something more perfect must be attempted prudently and gradually, without being perceived, and why the legislator should not judge that some prevailing system must be entirely overthrown before persuasion concerning the justice of the other has become more universal and the practical obstacles have been more fully removed.

But from legal justice, citizens ought to bear with equanimity the economic inequality of an imperfect system which the common good demands, to which they know that the regime of private property is to be ordered.

Therefore, without violation of any justice, the necessary moderations of political prudence are employed.

Cf. an excellent confirmation of this doctrine in Suárez, *De Legibus* [On Laws], bk. 5, ch. 16, no. 8.

111. III. THE SECOND MEMBER OF THE SAME PART IS PROVED.

In view of the importance of the matter, we shall separate the three points of which the assertion consists.

1. The perfect method of distributing taxation is not that portions of tax uniformly correspond to portions of proceeds.

For the proposed method:

- a) Falls short of the equality of distributive justice;
- b) Is supported by vain and fictitious foundations;
- c) Compels its patrons to speak contradictory things.

Therefore. It is to be rejected for three reasons.

To the antecedent:

a) **It falls short of the equality of distributive justice.** For this justice wills that citizens pay uniformly according to their means, according to their ability to pay. Thus teach Molina,¹ Lessius,² and C. de Lugo;³ thus also Smith and the authors whom we oppose in the conclusion.

¹ Op. cit., vol. 3, disp. 668, no. 1.

² Op. cit., ch. 33, no. 6.

³ Op. cit., vol. 2, disp. 36, no. 23.

But. The ability of citizens to pay does not uniformly correspond to portions of proceeds.

Therefore. Distributive justice forbids portions of tax to correspond uniformly to portions of proceeds.

Proof of the minor. For the more necessary or useful the use of proceeds is to you, the more precious they will also be to you, and by that fact the less ability there will be to take something from them.

But portions of proceeds do not have the same use: those destined for procuring sustenance are more necessary than the others, among which you will also easily observe various degrees of necessity or utility.

Therefore. The ability to pay does not uniformly correspond to portions of proceeds.

b) It is supported by vain and fictitious foundations.

For if you ask the patrons of that system concerning the reasons for their opinion:

a) Either they rest upon a presumption, as though the benefit received from the commonwealth were to be measured by acquired fortunes. Thus P. Leroy-Beaulieu⁴ and Cauwès, no. 1220.

⁴ Cf. op. cit., p. 142, where he employs this strange reasoning: "The share of each citizen in the total amount of taxes ought theoretically and in strict equity to be proportional to the advantages which he derives from the expenditures of the State and to his share of responsibility in the establishment of the debt of the State." Thus far, p. 142. He continues on p. 152: "Since this assessment is impossible, it is presumed that citizens participate in the advantages and the faults of the government in proportion to their incomes!"

But after they themselves have confessed that it is altogether hidden from us in what proportion each person comes into a share of the common benefits; after they have approved the words of Stuart Mill

in which he contends that public expenditures correspond in no definite proportion to the resources of individuals, and indeed that, if you wished to seek a norm from a proportion of this kind, whatever it may be, the more wretched would have to be burdened;⁵ with what appearance of truth, I ask, can they allege a presumption of this kind?

⁵ “If we wanted to estimate the degrees of benefit which different persons derive from the protection of government, we should have to consider who would suffer most if that protection were withdrawn: to which question if any answer could be made, it must be, that those would suffer most who were weakest in mind or body, either by nature or by position.” Stuart Mill, *Principles of Political Economy*, bk. 5, ch. 2, §2.

This doctrine, moreover, is directly refuted thus:

I distinguish the assertion. The presumption upon which it rests would be just if the common good consisted only in the faculty, made common, of increasing goods, I pass over; otherwise, I deny.

β) Or they adduce this confirmation: he who possesses one hundred acres enjoys social protection for a quantity of goods which exceeds tenfold that which the owner of ten acres has to protect.

Therefore. Equity demands that the former pay ten times the tax with which the latter is burdened, as the proportional system holds.

Reply. I deny the consequence altogether, both because it labors under the false supposition that public money is consumed entirely or for the greater part in the protection of possessions, whereas most public expenditures are of another kind; and because the protection of one hundred acres does not require expenditures ten times greater than the protection of ten acres.⁶

⁶ Cf. Cauwès, no. 1220.

γ) Or, finally, they argue from the fact that the proportional system alone provides a mathematically certain and definite rule.

Passing over the assertion for now, the reply is that this rule is certainly false and therefore is not to be preferred to a rule perhaps less definite but which approaches the truth more closely. How often does it happen that, in a moral matter, several things cannot be exactly defined? What, for example, is the comparison of the good of fortune with the good of the body taken reduplicatively?⁷ Yet judges do not therefore refrain from defining the sum by which bodily injury must be compensated.

⁷ We add this in order to cut off an occasion of error. From an injured body, someone often suffers a loss of fortune which can be compensated by money. But it is not a question here of this compensation, but of the sum which is formally commanded to be paid on account of a wound inflicted or another injury of a higher order.

If the ease of a rule proved its excellence, the very exaction upon heads—a capitation tax—would, on account of its simplicity, have to be approved by the suffrages of all.

c) It compels its patrons to speak contradictory things.

Are the defenders of that system consistent with themselves:

α) When they deny that there is a definite proportion between public expenditures and goods possessed and nevertheless constitute their system upon that proportion, defined by presumption;

β) When they admit that the function of political authority is not the mere protection of rights and wish to derive from protected rights the portions of taxes which individuals must pay;

y) When not a few of them certainly concede that nothing is to be contributed from incomes destined for procuring food, because there is no ability to contribute, and nevertheless deny either that there is an unequal ability in the other portions of income or that the very quantity of the tax ought to vary according to the unequal ability?

2. The perfect method of distributing taxation is not that the portions to be contributed increase according to each person's means, by a constant law, according to an arithmetical or geometrical progression.

Proof. For this system is absurd, contrary to each norm of distributive justice, and logically flows toward the opinions of socialism.

a) **It is absurd.** For while it wills an infinite progression—an indefinite progression—it at the same time constitutes it in such a way that it soon ceases: for the portions which would have to be contributed according to that system would shortly equal the proceeds of the wealthier.

b) **It is contrary to each norm of distributive justice** (cf. no. 63).

The higher norm is drawn from the common good. That method of taxation which deprives the community of necessary monies is opposed to it. But who does not see that the wealthier, lest they feel too great a burden, will carry their persons and resources into other regions?

The lower norm is that of preserving equality among citizens. In this system both persons and things would be treated unequally. Things, indeed, because although the various portions of incomes have various uses and therefore are of unequal value, nevertheless the same burden of tax is imposed upon each portion; persons, however, because those portions of incomes which are of the same utility are unequally burdened according to the condition of the possessor, so that the wealthier, who are compelled to hand over all their incomes to the treasury, cannot seek even their sustenance for themselves from their proceeds.

c) **It logically flows toward the opinions of socialism.** For if you seriously wish, as the defenders of this system contend, to bring it about in some manner that the burden is felt uniformly by all—equality of sacrifices—you will not be able to obtain this unless fortunes are made equal, which pleases the state socialists.

The more profound reason why you feel the burden less if you abound in resources than if you are of a small fortune is this: because, in the former case, you can, provided that the tax is moderate, contribute a substantial sum from the incomes which remain—or which have a use pertaining to pleasure—while a poorer man is compelled to take something away from the more useful portion of his income.

3. But the perfect method is that which, proceeding as a sort of mean between the two, rests upon the various functions of proceeds.

Proof. Argument 1 we draw from the perfect agreement of that method with both norms of distributive justice. (Cf. no. 63.)

For that system contains these characteristics:

a) Morally all citizens ought to contribute some portion of the public money;

b) Only a moderate portion is exacted even from the wealthiest;

c) The more proceeds increase, the less the portions of tax which correspond to portions of proceeds differ, so that rather soon, after one has arrived, for example, at an annual income of ten thousand francs, the remaining portions are burdened almost uniformly. (Cf. above, no. 104, at the end.)

But. The first two characteristics correspond perfectly to the higher norm of distributive justice; the last to the lower norm. **Therefore.**

Proof of the minor. The common good, which is the higher norm, requires: a) That those to whom political suffrage belongs—"morally" all—ought to contribute something,⁸ lest they rashly attempt to increase public expenditures; b) That a burden too heavy or odious be imposed upon no one; c) That there be no danger that larger fortunes be transferred to other seats; d) That nevertheless the total of taxes suffice for providing for the commonwealth.

⁸ "Every citizen who has the right to vote must pay some tax." Leroy-Beaulieu, op. cit., p. 209.

But. The first three points manifestly correspond to the first two characteristics. It is also easy to understand that, as soon as morally all citizens ought to contribute something according to their means, matters can conveniently be arranged so that, without excessive burden upon anyone, the treasury does not lack necessary resources.

Nor is the equality among citizens, which we established as the lower norm of distributive justice, less well preserved by the proposed method. We bring this about thus:

A tax is a personal burden by which citizens are commanded to make common a portion of the goods which they possess. True equality will therefore be had if all citizens, as possessors, are held in the same position by the treasury. They will be treated in the same manner as possessors if the methods of taxation are accommodated to the variety of functions by which portions of incomes differ from one another. And in fact:

The various functions of incomes must be distinguished. For since external things are numbered among goods because they redound to the utility of men, it is evident that, in the present argument, absolutely the same value cannot be attributed to them; rather, their very value depends upon the use to which the things are destined by the possessor, so that it varies according to the degree of necessity or utility which belongs to that use. Therefore a certain first portion is aptly distinguished, of the highest value, by which provision is made for the necessities of life; a second, already of lesser price, which suffices for almost necessary or very useful expenses; and so forth, so that this rule can be established: *portions of incomes are worth so much less to the possessor, the more they have surpassed a certain quantity.* But if you compare the differences themselves with one another, you will perceive without difficulty that the earlier functions are farther apart from one another in value than the later ones. For while the difference between a necessary and a useful destination is very notable, there is already less difference between greater and lesser utility, and almost none among several destinations pertaining to pleasure.

If, therefore, you constitute a tax in such a way that you take away the same portion—for example, 7/100—from all portions of proceeds, you will have despoiled the possessor unequally. But in order that equality be preserved, after the sum by which citizens are sustained—the *Existenzminimum* [subsistence minimum]—has been relieved insofar as this can be done, the proportional shares to be

contributed in common must then be increased according to a progression which is not constant, but whose increments decrease and become almost nothing. This method, however, is that which was proposed here in our conclusion under letter **c**.

Argument 2, which we merely indicate:

The perfect method is that each person pay according to his own resources or means. This, moreover, is approved by most. But the resources or means of each person are riches considered not simply, but with their functions observed.

Therefore. The perfect method is obtained by distinguishing among the various functions of incomes.

112. III. Difficulties.

1. Each individual must pay the price of the benefits which he has received from the State.⁹
But. They do not pay that price unless portions of taxes uniformly correspond to portions of proceeds.

⁹ "It is a question for the State of recovering from each of the citizens the just price of services rendered." Leroy-Beaulieu, p. 160.

Reply. I deny the major. The adversaries themselves deny that the merits of the commonwealth are compensated through taxes. Cf. above. I deny the minor. Cf. the things just said in proof III.1.b.a.

2. Only the system of equal proportion rests upon a certain principle, while progression is destitute of every rule. And since there is no source from which the method of progression to be introduced can be defined, one method after another is rashly and imprudently proposed for adoption.¹⁰

¹⁰ "Proportionality is a principle, but progression is only an odious arbitrariness." Thiers, *De la propriété* [On Property], ch. 3.

Reply. I divide the antecedent. I distinguish the first part. The system of equal proportion rests upon a principle which is certain and true, I deny; certain but false, I concede.

I distinguish the other part. If the progression increases by a constant law, I concede; if it is such as we understand it, I deny.

You insist. Not even if understood as in the conclusion can that method be prudently defined. For it would be necessary to compare the various functions with one another and to assess by how much one is to be preferred to another, which no one has dared to undertake.

Reply. I deny the subsumed minor and I deny the rationale. For if taxation is made in the manner explained in the proof, it is plainly apparent that this assessment is not made rashly. We indeed admit that it cannot be defined whether the degree or function which is called necessity surpasses the degree of utility by two portions or by three; but if, guarding against every excess, you strive toward this, that you exact taxes from the less useful portion rather than from the almost necessary portion, and if you observe the other rules which were declared in the proof, a prudent manner of aptly ordering taxes will already be at hand for you.

What of the fact that not a few of the supporters of the first system now wish either some portion of proceeds to be relieved of every burden or to be burdened less than others, and yet they do not think

that they define anything rashly?¹¹

¹¹ “We do not admit that incomes of every origin and of different duration should pay the same proportional share.” Leroy-Beaulieu, op. cit., p. 152, note.

3. If the progression is moderate, it benefits the people almost nothing.¹²

¹² By Leroy-Beaulieu, after Proudhon, progression is called “a democratic toy.”

Reply. I deny, if you observe that relief of even several francs is already welcome to those who possess modest resources. Cf. below, no. 120.5.

Besides, if it benefits the people nothing, why do the adversaries themselves concede that the burden to be paid should be partly relieved for many?

4. The proposed system is ineffective. For it by no means prevents the wealthier from bearing a lighter burden than the poorer.

Reply. I deny the antecedent; and to the proof, I distinguish. It by no means prevents this, that is, it does not procure equality to the degree that justice wills and permits, I deny; that is, it does not bring it about that the burden is felt no more by a man of modest resources than by a wealthy man, I pass over or concede; but I deny the supposition that this is to be effected.

For the true consideration—unless you again wish to correct differences of fortune through taxes—is this: that social inequalities not be aggravated by the distribution of taxes, and therefore that the fact that some feel the burden more than others be attributed only to the antecedent inequality and in no way to the method of distribution. This, however, is had by equating citizens with respect to similar functions of goods.

5. The functions or uses of proceeds depend very greatly upon the will of the owner. Therefore. A just distribution of taxes cannot rest upon their definition.

Reply. Here, as we are often accustomed in moral matters, we observe what of itself—that is, for the most part—comes into use.

Article IV. Supplements to the Doctrine

I. COROLLARIES.

113. According to the order of increasing perfection, we can distinguish a threefold form of the distribution of taxes. The first, now almost suppressed, is that of simple capitation, by which absolutely the same sum was exacted from each person; the second, that of proportional distribution, by which each person pays according to his incomes considered precisely, or without respect to the burdens or debts by which the possessor is perhaps oppressed; the third, toward which we strive at the third stage, in which the incomes themselves are assessed comparatively, with account also taken of the person using them.

How little is yet established concerning the form by which the total of taxes is governed, and according to what rationale the “proportionalists” themselves can nevertheless approve some progression in direct taxes by which the inequality of indirect taxes affecting necessary things is compensated,¹ is set forth above, nos. 102 and 104.2.a.

¹ In French you would say: "A corrective progressive tax, to compensate for taxes progressive in reverse." Molina, vol. 3, disp. 668, no. 2, already acknowledges that inequality and from it discusses the justice of indirect taxes.

Observe also that it sometimes happens that a proportional tax is covered by a progressive appearance, as when progression affects merely the indications of incomes and not the incomes themselves. In Belgium, for example, for him who has two servants attached to his person, the sum exacted for one servant is more than doubled. The reason is that the law presumes more than doubled incomes to correspond to doubled servants; for this tax is placed upon incomes.

114. Other rules for determining the tax must be applied to the incomes of a bachelor and of a father of a family; and the various burdens of the latter—for example, what the number of children is—**must be weighed.** The same *Existenzminimum* [subsistence minimum] cannot, for example, be constituted for a man who must provide only for himself and for a man who has a large offspring to support; and you should say the same concerning the other functions which we have distinguished.

II. SCHOLIA.

115. Another question concerning the ordering of taxes. It can be asked whether citizens are to be equated in similar functions of goods, or whether he who is wealthier must pay more from his total income.

The matter does not appear free from doubt. For since certain portions of income have a use as necessary or useful among the wealthy as among the poor—even the wealthiest man suffers hunger and buys bread with his money—it appears that the same burden is to be imposed upon similar portions, whatever at last the total of the incomes may be. It is objected, however, that the comparative value of each portion varies according to the total to which it belongs.

The former manner of speaking pleases us more. Both, however—and this must be carefully noted—can be represented mathematically by the same diagram. This is shown by an easy calculation. Let there be, for example, a fixed income of 1,900 francs. If you exact nothing from 900 francs (0 percent), but 0.615 percent from 900 to 1,900 francs, it is the same as if you exact 0.32 percent from 1,900; for in either manner you will obtain 6.15 francs. Similarly, if 900 francs are made exempt, 900–1,900 pay 0.615 percent, and 1,900–2,900 pay 1.75 percent, it is the same as if you command payment of 0.815 percent upon 2,900 francs. The tax will reach 23.65 francs.

Nevertheless, it is preferable that, from the manner in which taxes are commanded, it be readily apparent according to what principles the ordering has been made.

116. By what characteristics the form which in French is called a degressive tax is distinguished from moderate progression was shown above, no. 104.2.

117. Concerning a tax imposed immediately upon incomes. Dissimilar, yet sufficiently connected with the progressive form of distribution, is the question concerning the immediate placement of a tax upon the totals of incomes themselves. In not a few regions—England, Prussia, Italy—a tax of this kind is in force.

Nor are there few among the various parties, including Catholics, who wish that tax to become as it were the cornerstone of the system,² so that it would become morally the sole tax, except only for certain duties which the rationale of the common good, sought from elsewhere, wishes to be

preserved: such as customs duties by which national industry is protected, and sumptuary duties. Cf. the cited article in *Rivista Internazionale* [*International Review*], p. 201, note 1.

² They defend the general and sole tax upon income. Cf. its praises celebrated by H. Denis, p. 286 ff.

The supporters of that tax chiefly extol its justice. For since it appears to be without shifting, while the incidence of other taxes is various and uncertain, an equally equitable distribution of taxation is obtained in no other manner. They also praise the facility—its elasticity—which it furnishes for increasing the force of taxes for some public necessity: for since it immediately affects all according to their proportional share, the increase is felt less than if it first fell upon a few citizens, for example, owners of lands. Cf. H. Denis, pp. 294–295.

Against it they object: **a) The very great difficulty of computing the incomes of citizens.** If you wish to define them authoritatively, you subject the citizens to many vexations; they will be compelled to reveal secrets, etc. Hence the protests, such as those heard, for example, in Italy in the year 1897.³ If you entrust the matter to the declarations of citizens, the matter lies open to innumerable frauds. Hence the more honest will be burdened more than others, and evil habits of lying and defrauding will grow strong in society, to the detriment of the common good. **b) Popular resentment.** A tax which must be paid all at one time escapes this less than the various indirect taxes which are contributed gradually and imperceptibly. Let it suffice for us to have indicated these things.

³ Cf. the words of the minister Depretis, recited by Denis, op. cit., p. 279.

But, with these disputations permitted, this is established: today most commonwealths need too great an annual revenue to be able to provide for themselves through a single and direct tax affecting proceeds. For the political powers would have to exact such a proportional share of incomes that they would arouse the minds of all against themselves. Hence they need to conceal many burdens under indirect forms.

118. What is to be thought about heavy taxes.

There have been some who praised the utility of heavy taxes.⁴ But without merit. In reality it is by no means expedient that citizens be burdened more than is necessary. For: **a)** Heavy taxes give occasion to many complaints; it is in the interest of the commonwealth that the citizens be content; **b)** Besides the domestic difficulties which they produce, they bring it about that monies seek for themselves a milder climate where they are less burdened; **c)** They increase endeavors toward fraud; **d)** And it is established by experience that public money is easily squandered. Things which are done by private industry cost society far less. The statements of those who say that the State distributes again among the citizens what it exacts from them are dreams—as though it distributed it gratuitously, or at least usefully!

⁴ Hence to the maxim, “The best tax is the least,” they reply with the contraries: “The tax is the best of investments; the tax is the best stimulus of saving and production,” in Cauwès, no. 1226.

Concerning the Graphic Description of Taxes

119. Uses. To the thesis concerning the forms of taxes we append a graphic description of them,¹ so that it may be discerned by the eyes themselves:

¹ Rev. Fr. Schaffers, S.J., graciously prepared this for us.

1. How easily a system of taxation can be ordered mathematically which agrees with the conditions proposed at the end of no. 104, so that: **a)** It approaches without end toward a most moderate limit; **b)** The portions to be contributed from income nevertheless increase continuously; **c)** All citizens enjoy an exemption affecting a definite amount of proceeds—the *Existenzminimum* [subsistence minimum]; **d)** The same portions of proceeds are burdened in the same manner among all.

For the curved lines display that system; and by the diagram itself it becomes manifest what portions of taxes correspond to individual proceeds.

2. How one and the same formula can satisfy various demands: whether you intend to relieve modest fortunes more or less; whether you establish a greater or lesser limit for the increasing portions; whether the public revenues themselves appear to require increase or decrease.

This property is apparent from the very variety of the lines.

3. That it is vain to establish steps definite in number and distinguished by fixed intervals, to which the same payment is commanded, since by continuous gradations all the advantages sought from that distinction of steps can be obtained just as certainly but in a more just manner.

This is established from the two lines drawn in the left-hand corner. For the line which is interrupted into sections—the broken line—displays the system of the former method, distinguishing as many classes as are defined by Prussian law. Yet it scarcely differs from the adjacent curved line which makes the classes infinite in number.

4. That the relief which citizens of slender condition obtain from the introduced progression is by no means to be despised, even if you contain it within the narrowest limits. (Thus we refute the statement of D. Leroy-Beaulieu.) Cf. below, no. 120.5.

120. In what manner the table is arranged.

1. The mathematical formula which we have used is one of those which are adapted to curved lines that, from the point whence they proceed—which you can vary—approach a straight line without end, without ever coinciding with it (curves with an asymptote). Moreover, we chose that which displays the hyperbola.

It is expressed in this manner:

$$x = -a + \sqrt{a^2 + y^2/n^2}$$

The greater you make a , the more you favor modest fortunes, and conversely; so that if $a = 0$, you obtain the proportional formula y/n . But so long as a exceeds 0, however much the incomes y increase, you will never have $x = y/n$, although you approach it without end.

2. In making the computations, we accepted the statistical data of the progressive tax which is commanded upon income in Prussia.

By that law citizens, according to the limits—lower and upper—between which their income is contained, are distributed into 26 classes upon which a varying tax is imposed, until one arrives at those who possess more than 100,000 marks annually.² For these are commanded to contribute 4

percent; at that quantity, as the maximum, it henceforth stops. You have here some of the steps and burdens:

² By the letter M. we designate the German money whose name is *mark* and which corresponds to approximately 1.25 francs.

Income	Tax ³	Income	Tax
900–1,050 marks	6 marks	2,400–2,700 marks	44 marks
1,050–1,200 marks	9 marks	2,700–3,000 marks	52 marks
1,200–1,350 marks	12 marks	3,000–3,300 marks	60 marks
1,350–1,500 marks	16 marks	3,300–3,600 marks	70 marks
1,500–1,650 marks	21 marks	3,600–3,900 marks	80 marks
1,650–1,800 marks	26 marks	3,900–4,200 marks	92 marks
1,800–2,100 marks	31 marks	4,200–4,500 marks	104 marks
2,100–2,400 marks	36 marks	4,500–5,000 marks	118 marks

³ The numbers placed under this word display the annual tax imposed upon the entire income and not merely upon that portion which exceeds the lower limit. In other words, those who, for example, have an income of 1,075 marks are commanded to pay 9 marks, not 9 + 6.

Etc. From 100,000 marks to infinity, 4 percent is exacted.

Incomes which remain below 900 marks are exempted from every tax. Finally, for those citizens who from duties of piety toward children, parents, etc., sustain special burdens, the tax is relieved by some portion, provided that their income remains below 9,500 marks.

3. If you observe how many incomes were found in the individual classes in Prussia in the year 1897–98, and how much public money was amassed from them, you will find without difficulty that this mean amount of income corresponds to the individual classes, and that the proportional share which they are commanded to contribute can thus be estimated:

Income ⁴	Number	Total amount of incomes	Acquired by the treasury in 1897–98	Mean amount of income	Proportion exacted
900–1,200 marks	1,281 × 1,000	1,313.2 × 1,000,000 marks	9.1 × 1,000,000 marks	1,030 marks	0.7 percent
1,200–3,000 marks	1,144 × 1,000	2,019.5 × 1,000,000 marks	28.6 × 1,000,000 marks	1,765 marks	1.4 percent
3,000–6,000 marks	217 × 1,000	888.9 × 1,000,000 marks	20.1 × 1,000,000 marks	4,100 marks	2.3 percent
6,000–9,500 marks	60 × 1,000	444.6 × 1,000,000 marks	12.1 × 1,000,000 marks	7,415 marks	2.5 percent
9,500–30,500 marks	50 × 1,000	765.9 × 1,000,000 marks	23 × 1,000,000 marks	15,310 marks	3.0 percent
30,500–100,000 marks	10 × 1,000	491.8 × 1,000,000 marks	17 × 1,000,000 marks	49,180 marks	3.5 percent

Income ⁴	Number	Total amount of incomes	Acquired by the treasury in 1897–98	Mean amount of income	Proportion exacted
100,000 marks– \$ \infty \$	$2 \times 1,000$	$445.5 \times 1,000,000$ marks	$17 \times 1,000,000$ marks	222,750 marks	3.8 percent
Total	$2,764 \times 1,000$	$6,374.6 \times 1,000,000$ marks	$126.9 \times 1,000,000$ marks		

⁴ The data displayed in the first four columns we have borrowed from Conrad's *Handwörterbuch* [*Concise Dictionary*], s.v. "Einkommensteuer" ["Income Tax"] (Germany).

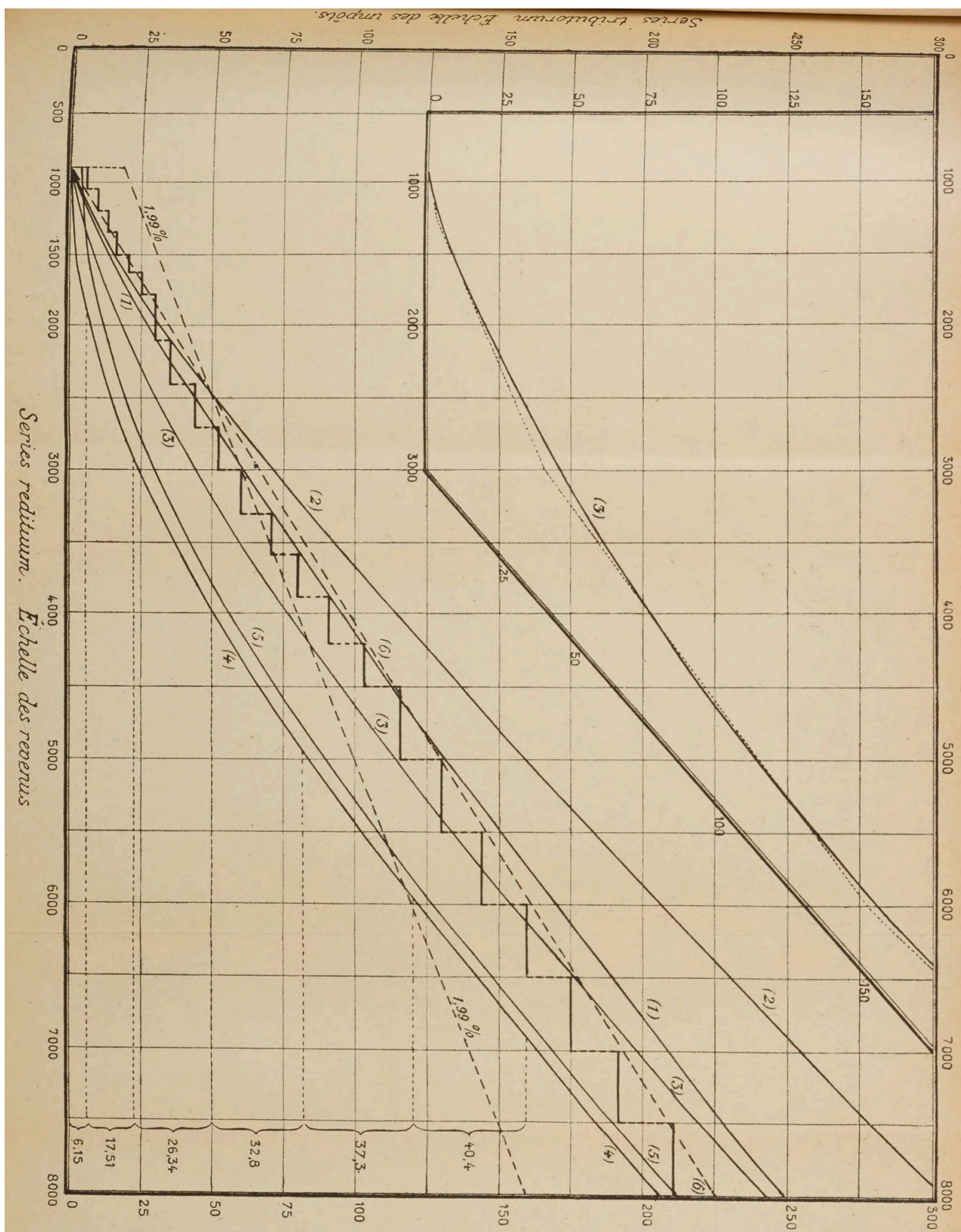
N.B. That system is of the properly progressive kind, since the greater part of the incomes and of the public money collected is subjected to an unequal burden.

4. The same public revenue would be had by means of a proportional exaction by which 1.99 percent was commanded upon total incomes exceeding 900 marks. But if you wished to make the first portion of 900 marks immune for all, it would be necessary, in order to obtain approximately the same annual total, to exact 3.2 percent from the remaining incomes. Observe, however, that, once that immunity of the first 900 marks is granted, a true rationale of progression affecting total incomes is introduced by this fact alone. The matter is evident to one considering that 900 marks are so much a smaller portion of the total income as the whole total is greater.

5. If, in the formula placed above, you made $a = 70$ and took 4 percent as the limit, a system of continuous progression would give Prussia the same revenue from taxes which it now has, but smaller incomes would be spared more.

For while 1,030 paid 6 marks, by this method they would contribute 2.5; and while 1,765 paid 26 marks, they would contribute 20.7. Conversely, 4,100, which contributed 92, would now contribute 99.3 marks.

If you substitute the limit of 5 percent for the limit of 4 percent, you could make $a = 200$ and nevertheless collect almost the same total for the treasury. Then, however, 1,030 would bear only 1.50; 1,765, 14. You see, therefore, as we said above, no. 119.4, that this relief is not to be despised.



Foldout chart. The facsimile preserves the plotted curves, stepped line, scales, line numbers, percentages, and interior tax annotations exactly as printed. English translations of its inscriptions follow.

Vertical-axis labels: *Series tributorum; Échelle des impôts* — **Scale of Taxes.**

Horizontal-axis labels: *Series redituum; Échelle des revenus* — **Scale of Incomes.**

Graphic inscriptions	Values printed in the chart
Curves and lines	(1), (2), (3), (4), (5), (6)
Proportional-rate inscription	1.99 percent
Main income scale	0; 500; 1,000; 1,500; 2,000; 3,000; 4,000; 5,000; 6,000; 7,000; 8,000
Main tax scale	0; 25; 50; 75; 100; 150; 200; 250; 300
Inset income scale	0; 1,000; 2,000; 3,000; 4,000; 5,000; 6,000; 7,000; 8,000
Inset tax scale	0; 25; 50; 75; 100; 125; 150
Interior tax annotations at the right	6.15; 17.51; 26.34; 32.8; 37.3; 40.4

EXPLANATION

1. The graphic description displays:

a) **By the line which imitates a staircase**, the steps of the tax which is imposed upon incomes by Prussian law and annually brings 127,000,000 marks to the treasury of that kingdom.

b) **By two straight lines, which are marked with broken signs (— — —), taxes of the proportional form:**

α) One of these takes 1.99 percent from the whole income of everyone, except those whose annual proceeds remain below 900 marks. From this tax the same return would be obtained—127,000,000 marks—as from the preceding one.

β) The other, however, marked (6), exacts 3.2 percent from everyone's income, except that the first portion of each person's income, valued at 900 marks, is exempt. It was therefore necessary to increase the proportional share of the tax so that it would produce approximately the same return.

c) **By five curved lines, taxes of the progressive form**, which correspond to the formula

$$x = -a + \sqrt{a^2 + y^2/n^2},$$

in which x displays the portions of taxes which are exacted from the individual portions of incomes; y stands for the incomes themselves; $1/n$ for the mathematical limit; and a for the quantity upon which the manner of curvature depends (French: *l'allure de la courbe*, "the course of the curve"). Hence, if you set $a = 0$, the line becomes straight and you fall back into the proportional system, as is indicated by the formula itself: $x = y/n$.

Moreover, in line (1), a is set at 70, and the limit at 4 percent. It would bring Prussia 125,000,000 marks.

Moreover, in line (2), *a* is set at 100, and the limit at 5 percent. It would bring Prussia 152,000,000 marks.

Moreover, in line (3), *a* is set at 200, and the limit at 5 percent. It would bring Prussia 122,000,000 marks.

Moreover, in line (4), all things are set as in (3), but the tax is calculated from proceeds from which 900 marks have been deducted; whereas, in the first three cases, it was calculated from whole incomes and, once the total of the taxes had been obtained, only then was the portion corresponding to an income of 900 marks removed. By form (4), only 100,000,000 marks are acquired for the treasury.

Moreover, in line (5), all things are set as in (4), but the same sum of 5 marks is added to each individual tax.⁵ In this manner 124,000,000 marks are obtained.

⁵ This sum of 5 marks is the tax which, according to the same formula, would have to be paid for 900 marks.

2. In the left-hand corner, you again have curve (3), beside which is placed a line broken into segments (French: *droite brisée*, “broken line”), which displays a form composed of steps (French: *impôt par tranches*, “tax by brackets”) having the same return. The steps, moreover, are distinguished thus:

Income	Tax	Income	Tax
900–1,200 marks	0.7 percent	6,000–9,500 marks	2.5 percent
1,200–3,000 marks	1.4 percent	9,500–30,500 marks	3.5 percent
3,000–6,000 marks	2.3 percent	30,500–100,000 marks	3.5 percent
		100,000 marks and thereafter	3.8 percent

3. The numbers which are arranged at the right, beside the descending line, and are inside the diagram—6.15, 17.51, etc.—show which portions of taxes correspond to portions of incomes. For the exterior numbers—0, 25, etc.—indicate the various total sums which must be paid upon each person’s whole income.⁶

⁶ For example, the portion from 900 to 1,900 is burdened by 6.15; the portion from 1,901 to 2,900 bears a burden of 17.51; the portion from 2,901 to 3,900 must pay 26.34. In total, 50 is owed, as the exterior number has it.

The same interior numbers make it manifest that the portions of tax which are imposed upon similar portions of incomes do not vary according to the total of the incomes, but that the same portions are exacted from each person. Thus, for example, the portion of incomes which is contained between the second and third of the horizontal lines is assessed as burdened by 26.34 marks, whatever at last the total of the incomes may be.

Remaining Minor Questions

Minor Question I. Concerning the Obligation of Undertaking Military Service

121. Someone may ask whether the obligation of military service can truly be called a tax. Many economists deny it, although they seem to be sufficiently at sea in defining the class of the

obligation.¹

¹ Let Cauwès, no. 1217, be an example: “It is a civic burden of a particular character.”

And indeed, if you take the word *tax* strictly, since no money is to be contributed, it does not seem to apply to military service. But if you consider the formal rationale of the obligation of serving as a soldier, you will find it to be the same as that of paying a tax. For it is a certain burdensome performance imposed upon citizens for the common good. Hence it is aptly referred, with the theologians, to the class of a tax; nor do the common people err in the name “tax of blood” (French: *impôt du sang*).

122. A question of no small importance is raised today concerning the faculty of redeeming oneself by money from this burden.

1. a) Not a few, among whom are DD. Beernaert and Cauwès (no. 1217), contend that this faculty is repugnant to the rationale of that obligation, inasmuch as it would be strictly personal.

b) Others judge that a law by which one is given the opportunity to seek with gold someone who would become a soldier in one’s place is contrary to distributive justice, since the poor are excluded from a benefit of this kind.

2. Yet the very emptiness of the arguments by which each opinion is defended already demonstrates that they have little force.

a) For by what rationale would you say that the obligation of serving as a soldier is personal?

Insofar as all citizens are bound personally, according to their ability, to contribute to the security and safety of the fatherland? They are no less bound, by their combined strength, to devote their labor to internal peace and prosperity and to every rationale of the common good.

Yet because it is established that citizens need not furnish these things immediately and through themselves, in what manner can you derive from that general obligation that all must proceed into the camp?

Insofar as a definite number of citizens who are to be conscripted is defined by law? It does not follow from this that the very persons who, for example, are designated by lot must personally perform the military service. For why should they be forbidden to hire another who would willingly furnish it in their place, provided that the soldiers are present in the defined number?

Insofar as the obligation of itself so adheres to the person that the latter cannot discharge this debt through another? An argument is wanting by which this assertion, by no means evident of itself, might be proved.² For if the office of nourishing his children can be entrusted by a father of a family to others who are worthy of trust, by what rationale is every choice of a representative said to be of itself illicit here?

² From this it is evident how empty the reasoning is which they employ when they argue approximately thus: It is forbidden to cast a personal burden upon another. **But.** The obligation of serving as a soldier is of this kind. **Therefore.** For the major must be denied unless you take a *personal burden* to mean a burden which, on account of a peculiar rationale, you must bear through yourself; and thus you formally say the same thing twice (a tautology). The minor, however, contains a begging of the question.

b) As regards the other assertion, or the alleged inequity of the distribution, they would not be far from the truth if, after money had been paid, the wealthier were made exempt in such a way that others were compelled to enroll in their place. But since the matter is reduced to a voluntary contract of letting and hiring, from which the condition of the poor becomes no worse at all—rather, they have there an opportunity for honorable gain which is not to be despised—there is no place here for envy except that which an unjust hatred of another’s happiness and a false rationale of equality engender.

Add that this faculty benefits not only the wealthy, since many families of moderate means have in this way preserved a son who was very useful or even necessary to them.

Add that minds are so disposed today that the legitimate immunity of clerics can be preserved by almost this rationale alone.

Therefore one must labor instead so that, with errors and prejudices removed, those who, hired for a price, become soldiers in the place of others may no longer be compelled to live under the contempt of the rest.

For a most just cause of piety [family duty], etc., can impel them to this; and if it is lawful and not unbecoming to hold military offices for the sake of gain, how would it be disgraceful to undertake voluntarily, for an honorable wage, the burden of service as a common soldier?

If, however, a more general faculty could be given to citizens of seeking for themselves a suitable substitute, under conditions which are more open to all, a law of this kind, on account of its very equity, would be most worthy of commendation.

123. So that we may now speak positively and precisely about the matter itself, the question comes down to this: Whether or not the common good, the end for which troops are raised, cannot be obtained unless citizens are compelled personally to become soldiers? If the matter should stand thus, and if the utility of a personal obligation should prevail over the disadvantages which are rightly and deservedly feared, the burden can be imposed by law upon the necks of citizens as personal. But if not, the law ought, far from merely being able, to permit the burden to be alleviated by a chosen substitute. For this principle holds: beyond what necessity bears, political authority cannot burden citizens with an obligation.

And here there is question of the gravest burden of all, by which a very great number of citizens are deprived of their liberty and handed over to a certain public servitude, even if temporary.

124. We sufficiently agree with the theologians who judge that the distribution of this tax is of itself not very equitable.³ For it is exacted only from those families which are endowed with male offspring; and the legislator often does not even think about compensating them for this burden. It would certainly be necessary, if our judgment is of any value, that those who cannot give persons should contribute a greater sum of money with which military expenditures would be provided for, so that, insofar as can be done, the obligation of providing for this common undertaking would fall more uniformly upon all.

³ *Of itself*, I say. For if the distribution of that burden is commonly judged just, you could not “practically,” on account of the persuasion of a few, even if it is truer, change that form or exact compensation. Therefore that inequality must then be borne with equanimity, from zeal for the common good; because it cannot be avoided, it will no longer be formally repugnant to justice.

A rationale for repairing the loss can also be entered upon in this manner: that a suitable stipend be paid to conscripted soldiers. Therefore the Belgian law is to be approved which, for some years now, has established a greater salary for soldiers, certainly for those who are of humbler condition. Nevertheless, all, even the wealthier, appear of themselves to have a right to equitable compensation.

Minor Question II. In What Manner Conscience Is Bound by Present-Day Tax Laws

Marrès, *De Iustitia [On Justice]*, bk. 2, nos. 191–225; Waffelaert, *op. cit.*, vol. 2, nos. 414–425; Croll, *Disputationes Theologicae de Iustitia et Iure [Theological Disputations on Justice and Right]*, vol. 3, nos. 1001–1023, besides the authors cited at the beginning of this chapter.

125. Why we write concerning this matter. Although it is not our purpose *ex professo*, after the manner of casuists, to direct the mind to the variety of cases, we shall nevertheless not depart from our purpose if we observe those few things concerning the obligation of conscience which may aid the understanding of the learned and suggest a method of prudently resolving doubts.

Let us treat separately taxes strictly taken and military service.

CONCERNING TAXES STRICTLY TAKEN

126. I. CERTAIN LESS CORRECT STATEMENTS ARE REJECTED.

1. First of all, it must be observed that, in this age, the rationale both of decreeing and of apportioning taxes has been changed too greatly for us to be able safely to trust the conclusions which pleased the doctors of a former age, even those of the first rank,¹ unless it is established at the same time that their reasons are also suited to present circumstances.

¹ Suárez, C. de Lugo, St. Alphonsus. Molina, however, wrote many things most wisely which retain their utility for the present.

2. We can by no means agree with the opinion of Rev. D. Marrès,² who judges that the obligation of taxes is to be derived from a tacit compact between the people and the government.

² *Op. cit.*, no. 196.

“The theologians,” he says, “already taught this by a most common opinion.” But how vainly the authority of the ancients is invoked in this matter will easily become manifest to one weighing these things:

a) When the Scholastic doctors make mention of a contract, they either think of taxes proceeding from a “feudal” compact, by which the Prince, under a fixed annual payment, had granted an emphyteusis [heritable long lease] of goods which at first had been applied to his support;³ or they ascribe this generic rationale to taxes, as though they were “a debt of nourishing and sustaining the burdens of the king.”⁴ This cannot be said today of the greatest part of taxes. b) Nevertheless, they establish this principle: taxes are owed in the manner in which a just law obliges them to be paid;⁵ and they concede that it can happen that this law would be merely penal.⁶ But if matters stand thus, what does that alleged rationale of a compact now effect? Must it not already be admitted, with Suárez in the place cited, that the matter is recalled to the common rules concerning the obligation of laws, and that “tax laws have nothing special in this”?⁷

³ Suárez, *De Legibus* [*On Laws*], bk. 5, ch. 13, no. 2.

⁴ *Ibid.*, no. 9.

⁵ C. de Lugo, vol. 2, disp. 36, no. 39.

⁶ Suárez, *loc. cit.*, no. 6.

⁷ *Ibid.*

“That this obligation,” Rev. D. Marrès continues, “is born from a tacit contract is shown with much greater certainty in more recent law than in ancient law.... This is so on account of the parts which, according to the fundamental compact, fall to the people in determining public expenditures.”

We judge this to be wholly fictitious. For: **a)** Today those special causes have departed on account of which certain taxes in ancient times appeared to assume the rationale of a stipend properly so called. And while taxes formerly were exacted more for a use already defined, public expenditures are now accommodated to the probable yield of the exactions; nor is there the least underlying danger that, if a tax is denied, debts to be paid would fall upon the king or his ministers: rather, if the treasury is deficient, the expenditures themselves will be curtailed. **b)** The argument is entirely wrongly drawn from the parts which fall to the people in determining public expenditures. For these parts consist in this: that the people by their vote elect deputies without whose consent neither could taxes be imposed nor public money expended for any end. But nothing is now obtained from this. For, besides the fact that there are many citizens who lack the right of suffrage: **α)** No one, while casting his vote, is conscious of an obligation which he assumes from justice to pay taxes; **β)** Nor, as we saw in Thesis VI, do the deputies exercise a mandate properly so called; **γ)** Certain parts have therefore been granted to the people so that they may bear the burdens with a more equitable mind and be able to guard themselves against excessive or unjust exactions, and by no means so that the obligation of paying might be increased; **δ)** The rationale by which taxes are to be paid must be indicated in such a manner that it applies to every species of taxation, whereas the one which we refute is not adapted to personal performances, for example, military service. Will you say that citizens are bound by a quasi-contract to enroll in military service?

Nor does the distinguished author appear to us to bring forward a stronger rationale by recalling the civil action which belongs to the treasury for exacting defined portions of taxes. For a civil action can very well be brought even if the debt of strict justice does not arise until after the sentence of a judge. Thus many fines, and thus the money which must be paid on account of damage inflicted upon goods of the soul or of the body as such,⁸ are strictly not owed until after the sentence of a judge;⁹ and nevertheless they are sought by a civil action.

⁸ We add this because damage to goods of fortune which often flows from an injury to reputation or body must be compensated without awaiting a sentence.

⁹ Indeed, Most Illustrious D. Waffelaert, no. 423, thinks that a fine which a just sentence of a judge has imposed upon one defrauding taxes is to be paid from obedience alone.

Therefore, in reality, no quasi-contract can be acknowledged which is proper to this matter of taxes; but the sole virtual compact which intervenes between the people and princes or magistrates pertains to this: that the latter are bound from justice to administer the commonwealth well, while they obtain the honors and rights of rule itself; while the people are bound by the reciprocal offices of legal justice.

The rights of rulers, moreover, plainly suffice, since, where there is need, the legislator is able to introduce the obligation of commutative justice itself. Cf. Thesis IV.

3. We indeed hold as probable the opinion which excuses citizens from paying taxes whose justice is positively doubtful to them.

Nevertheless, we cannot assent to those who judge that not a few taxes today are of such a quantity or distribution that their inequity is solidly probable.

They certainly do not establish the matter because, by reasoning, they have perhaps disclosed some defect of the prevailing system or have demonstrated that the expenditures made, for example, upon military affairs are excessive. For if those who preside over public affairs are situated *practically* in the moral necessity of persisting in making these expenditures, citizens must, on account of the common good, tolerate with an equitable mind burdens even which of themselves are heavier than is fair. (Cf. Thesis V.)

But do we not have sufficiently manifest indications of this moral necessity? Otherwise, how do you explain that taxes everywhere among nations approximate nearly the same quantity and vary little with the parties which prevail in the State? Add that, if there is some excess, the use of those things which are expended is nevertheless public, and riches are not consumed, as sometimes formerly, upon the private delights of some tyrant.

4. Two arguments, sufficiently captious, must be dispatched in a few words; they are accustomed to move laymen not a little, so that they wonder at the theologians who hold the obligation of conscience, or even the necessity of justice, to be doubtful. They are of this kind:

a) He who defrauds the State of that portion of taxes which had been assessed upon him by law fails in the natural office of contributing from his own to the common expenditures. **Therefore.** He is guilty of a sin against legal justice.

b) While he denies his own contribution, he casts the burden upon others, who are thereby compelled to pay more. **Therefore.** He appears injurious to the other citizens, so that he offends against commutative justice.

Reply to a). I distinguish the antecedent. He fails in the natural office insofar as that obligation of conscience is urged by a just law, or insofar as, if that portion of taxes were defrauded, the State would not be able to suffice for its necessary expenditures, I concede. Otherwise, I deny.

Of itself, indeed, the office of contributing from one's own is contained within those limits which a reasonable law has prescribed. But, especially today, a very reasonable law can bind merely to a penalty. For public authority does not lack other means, or exterior force and efficacy, by which it may provide abundantly for the treasury and bring it about that all in fact pay equally; but on the part of the subjects, there are many who esteem the guilt of conscience lightly, so that a bond of conscience would seem to place good citizens in a worse condition than the wicked.

The reply is confirmed. That immunity which someone obtains *per accidens* from his fraud can be assimilated to a reasonable privilege, the most just cause of which is indeed not some merit of the deceiver, but the utility of tempering the law, diminishing sins, and equalizing the rights of citizens.

But where the obligation from positive law is lacking, we saw above, in Thesis IV, that public necessity is required in order that the offices of legal justice may subsist of themselves. Wherefore, when human law is lacking, some obligation of conscience is established from the need of the treasury alone.

N.B. Moreover, the advantage which you can hope for from fraud generally affects only the smallest part of the taxes, so that, taking account of those which you will not be able to evade, you must be judged for this reason also not to have abandoned the natural office.

To b). **I distinguish the antecedent.** He casts the burden upon others by neglecting an office of commutative justice or by doing an injury to others, I deny; he casts the burden upon others, but without violating commutative justice, I pass over. **I distinguish the consequence likewise.** For he alone is guilty of injury who, through an injury, is the cause why others must pay more.

Otherwise, you could condemn as guilty of injury one who deliberately abstains here from consuming things which are burdened by an indirect tax. But injury was absent, since he was bound by no debt of commutative justice.

We merely passed over the other part of the distinction because, in so great an abundance of taxes, the frauds of some in no way increase the contributions of others.

If you wish to confirm the same thing *extra formam* [outside the formal syllogistic structure] by a rationale which, although more common, is perhaps better adapted to persuading many, you could say that, through a purely penal law, the customary tax to be borne or the danger of a fine is proposed to all under a disjunction; that all are free to enter upon that risk; and that those for whom the matter turns out otherwise are deprived of a far greater sum of money. Why, then, should we complain that some, whom fortune has favored, enjoy some benefit which is compensated by the penalty of others?

127. II. DIVERSITY OF OPINIONS. In reality, more recent authors have gone into various and diverse opinions; in this variety of opinions it is permissible to suspect the influence of climate or region.

Thus, after several other doctors of Germany, Rev. Fr. Lehmkuhl, at least as regards direct taxes, defends the strictest doctrine of all, according to which one who, when legitimately commanded, does not declare that value of his goods which upright men are accustomed to disclose would violate commutative justice itself.¹⁰

¹⁰ *Theologia Moral*is [Moral Theology], vol. 1, nos. 981, 984.

Rev. D. Marrès, who writes in Holland, binds one from commutative justice to pay taxes only after the portion by which one's goods are burdened has been legally defined. According to him, however, declaring one's goods in the manner in which upright men are accustomed to do it is only an obligation which he ascribes to the virtue of obedience; when an oath is exacted—as in Holland from those receiving an inheritance—the debt of religion is added to it.¹¹

¹¹ *De Iustitia* [On Justice], bk. 2, nos. 196, 197, 199, 209.

In Belgium, Most Illustrious D. Waffelaert sufficiently agrees with the doctrine and arguments of Rev. D. Marrès, except that he concedes the laws to be merely penal “insofar as they impose a declaration.”¹²

¹² Op. cit., vol. 2, no. 421. Cf. nos. 419–421.

To another Belgian author, Génicot, S.J., it appears probable that tax laws are merely penal.¹³

¹³ *Theologia Moralis* [*Moral Theology*], vol. 1, no. 574.

This opinion has several patrons in Italy, such as Rev. D. Berardi,¹⁴ Rev. Fr. Bucceroni, S.J.,¹⁵ and Rev. Fr. Palmieri, S.J.¹⁶ It also pleases Crolly in England.¹⁷

¹⁴ *Praxis Confessariorum* [*Practice of Confessors*], nos. 1651, 3155.

¹⁵ *Institutiones Theologiae Moralis, De Legibus* [*Institutions of Moral Theology, On Laws*], no. 81.

¹⁶ In the notes to the moral work of Ballerini, S.J., *De Legibus* [*On Laws*], no. 154.

¹⁷ *Disputationes Theologicae de Iustitia et Iure* [*Theological Disputations on Justice and Right*], nos. 1001–1023. Cf. especially from no. 1017 onward.

C. Gousset¹⁸ responded more severely in France. Gury instead refrains from expressing any opinion,¹⁹ as does Konings himself in America. The latter nevertheless inclines toward the more benign opinion.

¹⁸ *Theologia Moralis* [*Moral Theology*], vol. 1, no. 999.

¹⁹ *Compendium Theologiae Moralis* [*Compendium of Moral Theology*], vol. 1, nos. 735–744. Carrière entirely omits this question.

To say something concerning the authors themselves, none appears to us to be accused of excessive severity or benignity. But the disagreement which we have observed among them is to be attributed chiefly to two causes: the different dispositions of legislators and the varying persuasion of peoples.

For in certain regions—for example, in France—the legislator openly professes indifferentism, makes guilt before God of no account, and strives to found all things upon a civil bond. It is then scarcely apparent how his positive precepts would bind the conscience. Cf. Konings, *Compendium Theologiae Moralis S. Alphonsi* [*Compendium of the Moral Theology of St. Alphonsus*], nos. 178 and 818.

In other places, on the contrary, such as Germany and Holland, the public power by no means makes little of the divine sanction of laws.

The persuasion of the people itself is sometimes, as in Belgium, inclined to regard laws of this kind as merely penal, while elsewhere the opinion which denies a direct obligation of conscience offends pious minds. But custom is the best interpreter of laws.

Therefore we judge it necessary that, in his own region, each person consult approved national authors and cautiously receive the things defined in this matter by foreigners.²⁰

²⁰ We wish this opinion of ours to be observed, lest we seem too ready here to excuse sins.

128. III. GENERAL CONCLUSIONS. Certain things, however, must be added concerning those which can be established generally.

a) Everywhere it can probably be held that “a strict right arises for the treasury only after the royal commissioner has defined the proportional share and imposed it upon the citizen as payable.” Thus Rev. Fr. Lehmkuhl himself, vol. 1, no. 984, note 1.

b) Everywhere, too, citizens are to be exhorted to pay taxes according to the custom received in the region.

c) He who defrauds the treasury only of those portions of taxes in which the conscientious themselves are accustomed to do so—as among us the true price for which a field was sold,²¹ or the sum which has fallen to someone by inheritance, is concealed—is not on this account to be accused of any sin. On this account, I say: for it is not lawful to use evil devices, for example, lies.

²¹ Observe that, on account of the received custom, not even the guilt of a lie inheres in the declaration of a lower price.

d) Unless—which we judge happens rarely—the injustice of the law is sufficiently established, he certainly sins against commutative justice who corrupts collectors of taxes or by force and threats prevents them from discharging their office of exacting the tax.

For even if the law is regarded as merely penal, the right of taking what is owed by a just law nevertheless cannot be denied to the treasury. That right is violated through force or the corruption of those who by office are bound to provide in this matter for the utility of the commonwealth.

But what if you have concealed goods, or deceived officials either by lies or, what is worse, by perjuries?

Rev. Fr. Lehmkuhl²² regards these devices not only as illicit, but places them among unjust means. Others, on the contrary, such as Most Illustrious D. Waffelaert,²³ Croll,²⁴ and Génicot,²⁵ judge, once a penal law is posited, that violence or corruptions alone are unjust.

²² Op. cit., vol. 1, no. 985.

²³ Op. cit., vol. 2, no. 418.

²⁴ Op. cit., nos. 1020, 1021.

²⁵ Op. cit., vol. 1, no. 574.

We agree with the latter opinion. For in the hypothesis in which we reason, which is that of a merely penal law, the commonwealth is content with the sole right of occupying this portion of my patrimony which is to be assigned to it by the tax law. But that right is not violated by an action which directly affects the goods, for these are not yet the property of the one who wishes to occupy them; nor by a simple lie, which of itself is opposed only to truth and whose efficacy does not despoil the community of anything already its own.

The reply, moreover, is confirmed by other examples. Whether you have concealed a wild animal or by a lie eluded a hunter pursuing it; or whether you have hidden your goods lest a poor man, pressed by extreme necessity, appropriate them to himself, and have used perjury to deceive him: there is no one who would accuse you of a strict injury. Yet do not the hunter and the poor man possess a right of occupying the wild animal or your goods similar to the right which the commonwealth has acquired for itself from its penal law?

You will say: Why, then, is a legal heir (*heres legalis*) condemned for injustice when he deceives a sick man by a lie, so that the latter, relying upon a certain hope of recovery, does not make a testament in favor of another?

The rationale of the difference is that the sick man is prevented by the lie from disposing of his own thing, which is strictly injurious to him; and the person who would have been named legatee has a

rigorous right not to be prevented from obtaining the good through an injury inflicted upon the donor for that end.

The liar, therefore, does not preserve his own thing here, but invades another's. Cf. Crolley, no. 1020.

CONCERNING MILITARY SERVICE

129. I. THE STATE OF THE QUESTION IS DEFINED. 1. There is no one who contends that a citizen, unless hired by the government, is bound directly from commutative justice to sustain this burden; but some judge laws of this kind to be merely penal, while others urge a debt of legal justice or obedience.

The question concerning commutative justice first arises when someone, through an exemption illicitly obtained, is the cause why another is commanded to be in the camp.

Nor is it doubted that he of himself commits an injury who, after he has hired himself for a price to become a soldier for another, compels the latter, by deserting the camp, to make new expenditures unless he prefers to undergo military service.

These things, as being plain, can be omitted by us; but a few things remain to be said concerning him who, not having been hired, evades that obligation.

130. II. WHAT THINGS ARE SUFFICIENTLY ESTABLISHED IN THIS MATTER. Here again Rev. D. Marrès finds a certain rationale of a contract, on account of which he is led to the strictest opinion of all. In kingdoms where a selection of young men is made by means of a certain drawing of lots, "These young men," says the distinguished author,²⁶ "are commanded so to divide among themselves, by an aleatory contract, a burden imposed universally upon all, that some alone are burdened by that obligation while the rest are free; the young men drawing the lot, therefore, must from strict justice observe the stipulations of this tacit contract, since it is onerous."

²⁶ Op. cit., bk. 2, no. 225.

Yet, with the learned man's leave, it is one thing for the legislator to take soldiers for himself by lot, and another for an aleatory compact to have intervened among the young men themselves. There is no more trace of their private consent to a compact than there is consciousness of it. That the law should supply their consent so as to bind them as though they had bound themselves by a mutual compact is something so strange and unusual that it must not be conceded without the clearest reasons. But that singular opinion is plainly destitute of every kind of argument. Therefore, leaving it aside:

We hold for certain, with the common opinion, that he does not sin against commutative justice, even if he has indirectly been the cause why another is compelled to serve as a soldier:

- a) Who by artifice has withdrawn himself from the drawing of lots itself;
- b) Who, having been designated by lot, has rendered himself unfit for military service, or has feigned illnesses and deceived the physicians or officials placed over the selection;
- c) Who has sought as an accomplice in his fraud a private physician, one not publicly hired.

The rationale is that he is injurious neither by the end intended nor by the method employed to Titus, who is substituted in his place. He is not injurious by the end, since he has merely wished to

cast off a yoke which he was not bound to bear from commutative justice. Nor is he injurious by the method employed. For that method, although illicit, does not contain an injury done to Titus, who, generally being wholly unknown, suffers no violation of anything or any good of his own, nor could he prove a right of his own to demand that another, on account of his foreseen detriment, abstain from seeking his own advantage.

But, on the contrary, he without doubt sins against the virtue of commutative justice who by fraud or artifice brings it about that someone who by law is simply exempt—for example, on account of infirmity—is conscripted. And, in our opinion, he is also guilty of injury who corrupts officials, not in order to free himself or a friend, but for this end: that the burden be imposed upon another young man who has not been called by lot. The former solution is established from the fact that he who is simply immune by law is injuriously deprived of his liberty. We prove the latter from this: that everyone has a right that an action which is foreseen to be harmful to him not be done for the end of bringing harm upon him.

131. III. THE CONTROVERTED QUESTION. One thing therefore remains. What if, without an intention adverse to anyone, you have corrupted publicly hired physicians or magistrates so that they pronounce you exempt, even though they certainly know that another will be commanded to undergo the burden in your place?

Most condemn the officials and physicians as guilty of strict injury, and consequently the corrupter, who is the principal author of their fault. The cogency of the proof is doubted by Rev. Fr. Lehmkuhl.²⁷ Most Illustrious D. Waffelaert denies it.²⁸

²⁷ Op. cit., vol. 1, no. 988.

²⁸ Op. cit., vol. 2, no. 443.

The reasons which favor the more common opinion are these: **a)** A distributor is bound from strict justice to follow that rationale of distribution which is established by law. **But.** These officials or physicians, while they unduly exempt one person and take another, pervert this rationale. **Therefore.** — **b)** He who is not compelled by law to serve as a soldier has a strict right to preserving his liberty. That right is violated when he is commanded to take the place of another who is undeservedly granted an exemption. **This is confirmed** from the fact that no one would excuse from injury a collector of taxes who, by diminishing the tax of one person, illegitimately increased that of another.

To these arguments, which are not to be despised, it is replied: **a)** This is in doubt: whether the magistrates have properly undertaken the role of distributing the burden of military service among the young men, so that they are bound from justice toward them to follow the order prescribed by law and to pass over no fit man who is designated by lot for serving as a soldier; or whether they are bound by no other obligation of justice except that of providing for the community so that soldiers suitably selected may be at hand for it. For just as a competition can be announced without an obligation of strict justice to select the worthier person, so too this rationale of conscription can be employed so that those whose lot has been favorable enjoy no strict right of exemption. **b)** He who is fit of himself is not free absolutely, but under a condition: provided that a sufficient army is now conscripted from others bearing military service. If one of these is lacking, for whatever cause it may be, the next in order is obligated. Therefore, when the physicians declare the next in order fit to serve, they do not sin against justice, but discharge their office; but insofar as they have falsely

represented the former as unfit, they indeed illicitly favor him—but do they do so unjustly? The commonwealth which hired them suffers no loss: it will have the soldiers it desired. They are not moved by an intention of harming; they merely intend the benefit of someone who can, without injury, extricate himself from the burden even by lies. Are they bound from strict justice to abstain from cooperation in an act which is not of itself unjust?

So that we may disclose our opinion in a few words: **We cannot excuse from the sin of injustice magistrates who have acted in this manner.** As regards **physicians**, it appears to us that the office which was entrusted to them must be considered. If the physicians were among those who decide the case of each individual by their vote, they truly appear to us to distribute the common burden. But if, by rejecting a fit man, they take another who otherwise would have departed immune, they in reality pervert the rationale of distribution as it was prescribed by law, nor can they free themselves from the guilt of injury.

But if they must merely give a testimony (*certificat*, “certificate”) concerning those who are fit or unfit, which is then evidence for those who decide the matter, we excuse from injury those who falsely ascribe illnesses to young men. For suppose that by law young men were permitted to approach any physician who might testify concerning their health: no one would then accuse of injury him who by a lying written statement cooperated in someone’s fraud, since he would be bound by no peculiar office of justice toward the other young man whom the immunity of the former indirectly harms. But the fact that now only the few designated by the government can be approached was established to safeguard the interests of the commonwealth, lest it lack fit soldiers; toward the young men themselves, however, these physicians are no more obligated than in the former case, unless perhaps they must specially promise that they will maintain equal dealing among all.

Finally, even if the physicians are to be accused of injury, the young men themselves will nevertheless be able to rely upon the probable injustice of a law of this kind for excusing those devices in some manner; for these appear to amount to some method of redeeming themselves from unjust vexation.

Question IV: The Vice of Injustice and Restitution

Synopsis of the Question

132. According to the order, we would now have to treat of the right of property and of several topics which are proper to commutative justice. But before we dwell upon one species of justice, it is preferable that we have the shorter question which remains, common to the three species, concerning the opposed vice of injustice.

Concerning this vice we choose three arguments for ourselves, so that:

The first disputation may be concerning **the general rationale of this vice**;

The second concerning the maxim: **no injury is done to one who knows and consents**.

The third, finally, concerning **the nature and roots of restitution**.

Chapter I: The Vice of Injustice

St. Thomas, II-II, q. 59; Molina, tract 1, disp. 9 and 10; Lessius, chap. 7, doubts 1 and 2; C. de Lugo, vol. 1, disp. 8, sect. 1, and vol. 2, disp. 34, sect. 1; Waffelaert, vol. 2, nos. 2 and 404.

Article I. Formulation and Arguments of the Proposition

THESIS VIII

Injustice is opposed both to legal justice and to particular justice; it is a special vice, whose act is of its kind a mortal sin.

133. I. THE STATE OF THE QUESTION. THE TERMS ARE EXPLAINED.

Both to legal justice and to particular justice. By the latter name we understand both its species: distributive and commutative.

Injustice, which is a vice, is opposed. We call a moral vice that which is a bad habit discordant with right reason.¹ As a habit, it signifies a stable disposition of the subject.² Therefore, not everyone who does what is unjust is infected by the vice of injustice. Indeed, because the will is generally enticed to choose what is unjust by an end different from the formal dishonesty of injustice—for example, by cupidity, anger, or hatred—the vice of injustice is rarely found in a man, as St. Thomas judges, although acts of injustice are most frequent. Cf. II-II, q. 59, art. 2, corpus and reply to obj. 2.

¹ Schiffini, *Ethica* [Ethics], no. 91.

² I-II, q. 49, art. 2, reply to obj. 3.

Special, insofar as it is not a mere common denomination of every sin, or its general condition, but is a vice inclining toward a sin specifically distinct from the sins which are opposed to other virtues.

Nor is injustice itself one species, but as a certain genus is referred to its inferiors, which, as is evident from the things handed down above, will be illegal injustice and particular injustice. The

latter, in turn, contains under itself respect of persons, opposed to distributive justice, and the injustice which is opposed to commutative justice, whose act is properly called injury.

Whose act, which through the divine law prohibiting it becomes a sin.

Is of its kind a mortal sin.—Of its kind, or *per se*, when someone is not excused either by smallness of matter or by defect of deliberation.

134. II. THE THESIS IS PROVED.

1. FROM SACRED SCRIPTURE, especially as regards commutative injustice.

For not only does the Apostle generally exhort the faithful in the Epistle to the Romans 13:7 to render to all what is owed, but very frequently in the sacred writings sins, especially those against commutative justice, are so forbidden or reproved that they are not rarely declared in express words to be mortal— sins. Cf. Exodus 20:13–17, where the Decalogue is promulgated, confirmed in the Gospel of Matthew 19:17–18: “If thou wilt enter into life, keep the commandments”; the grave admonition of the Apostle in 1 Corinthians 6:9–10; 1 Thessalonians 4:6; etc. But it is clear to the reader that those sins are regarded as special.

2. FROM REASON.

a) Injustice is a special vice.

First argument. A vice is contrary to a virtue.

But. The threefold rationale of the virtue of justice is special according to its essence; and the vice of injustice is opposed to it.

Therefore. The vice of injustice is special.

Second argument. To act in contempt of the common good that is owed, and to violate the rights of another private person, have in themselves a special rationale of dishonesty, one not common to all sins according to their formal rationale. **Therefore.** The vice which formally inclines toward these things—namely, injustice—is special.

b) Its act is of its kind a mortal sin.

First argument. Every sin which of itself is positively opposed to charity, which is the life of the soul, so that of itself it destroys the bond of friendship among men, is of its kind mortal.

But. The sin of injustice is of itself opposed to charity in this manner. **Therefore.**

Proof of the minor. To charity, by which we are led to will good to our neighbor, there is of itself opposed in this manner an act by which harm is positively inflicted upon another, or a right is denied.

Therefore. (St. Thomas, II-II, q. 59, art. 4.)

Second argument, particular to “illegal” injustice.

The formal and practical contempt of a good which is greatest and necessary of itself brings about a grave disorder.

But. This is the special malice of illegal injustice. **Therefore.**

135. III. DIFFICULTIES.

N.B. Our position does not appear capable of being seriously attacked. We shall therefore propose those difficulties which the Angelic Doctor opposed to himself, so that by their solution the understanding of the doctrine may be perfected.

1. INJUSTICE IS NOT A SPECIAL VICE. For:

a) "Every sin is iniquity." 1 John 3:4.

Reply. Insofar as every sin is against the divine law, the divine good, and thus merits the name of injustice, I concede. Insofar as every rationale of sin is against legal or particular justice, I deny. Under some rationale, but not under every sinful rationale, a sin is opposed to the common good.

b) No special sin is opposed to all the virtues. **But.** Injustice is opposed to all the virtues. **Therefore.**

Reply. I distinguish the major. *Per se* and directly, I concede. Accidentally and indirectly, insofar as it touches the matter of all the virtues, but by its own special rationale, I deny. **I contradistinguish the minor.** Injustice is opposed to all the virtues directly, I deny. For not every rationale of sin is injustice. Injustice is opposed to all the virtues indirectly, I concede or pass over.

For in external operations which pertain to other virtues, attention must also be given to right order toward one's neighbor. If this is violated, particular injustice also will be found in that matter. Legal injustice, however, will be present when the common good to which the act of another virtue commandingly pertained is contemned.

c) Injustice and justice are in the will; and every sin is in the will. **Therefore.** Every sin is injustice.

Reply. To the first part of the antecedent: Injustice is in the will, I distinguish the antecedent. As a habit inhering in the will and regarding its proper object, I concede. As a habit regarding every matter which the will touches, I deny.

To the second part. Every sin is in the will: I distinguish the antecedent. Insofar as the will extends itself to every moral matter, since by command it governs the passions and external operations, and consequently insofar as the rationale of sin inheres in an act through denomination from the will, I concede. Insofar as every sin is an act of the will, I deny.

2. IT IS NOT OF ITS KIND A MORTAL SIN.

a) **Against the argument:** Charity is the mother of all the virtues; **Therefore.** A sin contrary to any virtue whatsoever is repugnant to charity. **But.** Not every sin is of its kind mortal. **Therefore.** Therefore it cannot be established that the sin of injustice is mortal because it is contrary to charity.

II-II, q. 59, art. 4, third difficulty.

And St. Thomas replies by denying the first consequent. For from the fact that charity is the mother of all the virtues it follows only that every sin is not from charity, but not that every sin is directly and positively repugnant to charity.

b) He who induces someone to venial sin harms him more. **Therefore.** If from harm inflicted upon another it follows that a sin against justice is mortal, *a fortiori* it is mortal to induce someone to sin venially. **But.** This is false. **Therefore.**

Reply. I distinguish the antecedent. He harms him more and under the same rationale, I deny. Under a disparate rationale, I concede. Namely, one who wills is induced to sin venially; one who

does not will suffers what is unjust.

Article II. Supplements to the Doctrine

SCHOLIA

136. Concerning illegal injustice, or that which is contrary to the virtue of legal justice, several things occur which must be observed.

a) **SOURCES OF SIN.** Guilt for that injustice can arise both from a human law binding in conscience and from the necessary connection which an action or omission has of itself with the common good. This clearly follows from what was said in the thesis concerning legal justice.

b) **SPECIFICATION.** Moreover, this guilt can be opposed to the virtue of legal justice by a merely generic opposition or also by a special opposition. For this to become manifest, it is necessary to recall that this virtue is indeed special in essence, but general in matter, so that it commands the acts of all the virtues and makes them necessary. This being posited:

a) If someone, while offending against a certain law, merely adverts that he is violating a prescription made for the sake of the common good, his sin will derive its specifying rationale from the order of the particular virtue whose act was commanded. If, for example, he has omitted Mass on Sunday, the sin is opposed to religion; if he has neglected to render to his father those things which the law commanded, he is to be accused of impiety. But the contrariety by which this sin is opposed to legal justice is only generic, and is distinctly explained when the species which we have just declared is accused. For this malice is not “as though parallel” and placed alongside the malice against the particular virtue of religion or piety, but as a genus it is contained in this species itself. In truth, the omission of Mass, etc., is a sin for this reason and for no other: because it is a certain manner of breaking through a prescription made for the sake of the common good. Therefore, he who says, “I omitted Mass on a feast day,” expresses both of these things at once: “I violated a command made for the sake of the common good,” and, “in such a manner.” But if, after accusing himself of the omission of Mass, someone should wish in addition to accuse the malice by which it is repugnant to legal justice, he would twice accuse one and the same malice, almost as, by saying “oak” (a tree of such a species) and “tree” (the genus), you would twice make mention of a tree.

And this, unless we are mistaken, is the true reason why, according to the common judgment of authors, once a sin against a particular virtue has been declared, the violation of legal justice can remain unmentioned in the sacrament of Penance. Cf. Lessius, chap. 7, no. 2; C. de Lugo, disp. 1, no. 65; and Billuart, *De Iure et Iustitia* [On Right and Justice], diss. 6, art. 1. Molina’s manner of speaking, tract 1, disp. 9, is less approved by us.

Nor for any other cause does St. Thomas¹ appear to establish that a sin of this kind is only materially contrary to legal justice. For in its composition with the specific difference, the genus is had as matter.

¹ II-II, q. 79, art. 2, corpus and reply to obj. 1.

N.B. Certain other malices inhere in every sin as common rationales pertaining to its essence. Thus “through any species of mortal sin a man transgresses some divine precept,”² and gravely violates

charity toward God.

² II-II, q. 79, art. 2.

The same thing must be said of these malices as of the generic contrariety to legal justice.

β) If neglect of a human law, on account of peculiar circumstances, brings grave detriment upon the common good, it inflicts another and grave offense against a special virtue, which has its origin from legal justice and is not understood to have been declared by the former transgression. For, every human precept being set aside, we are forbidden to harm the common good. That moral necessity cannot be set aside without injury to another special virtue, such as charity.³

³ Understand charity in the broader usage, in which it embraces every honorable love.

γ) Finally, if someone is moved to sin by contempt of the common good, or violates the law for the very reason that he may act against the commonwealth, then he will have sinned formally against legal justice. Then the act or sin, in addition to generic opposition to the common good, contains a special opposition, which is clothed with this opposition as with its form. St. Thomas⁴ aptly says: “Just as it pertains to the proper rationale of legal justice to attend to what is owed ... so it pertains to the proper rationale of transgression to attend to contempt”; and earlier: “Illegal injustice according to its essence is a special vice, insofar as it regards a special object, namely the common good which it contemns.”

⁴ Ibid. and q. 59, art. 1.

c) **GENERALITY.** But because from contempt of the common good a man is led to all sins, illegal injustice is called general according to intention. St. Thomas, *ibid.*

d) WHAT IF YOU ACT AGAINST THE COMMON GOOD OF A PRIVATE COMMUNITY?

What C. de Lugo, disp. 1, no. 66, asserts is less pleasing to us: there he introduces a sin against a certain legal justice less properly so called, which is committed by acting against the common good of some special and private community of which you are a member. But, as it appears to us, either the whole matter is terminated by private relations and special virtues, or, just as public power, if any flourishes in that community, is communicated by a perfect society (the Church or the State), in like manner sins against this common good are against legal justice properly so called, taken materially or formally. Rev. D. Pottier, *op. cit.*, diss. 3, no. 37, agrees with us.

137. Concerning respect of persons.

The vice repugnant to distributive justice is called respect of persons. It consists in this: that, in the distribution of common goods, someone attends to irrelevant conditions of persons and not merely to those which, according to the nature of the matter, make someone worthy or unworthy. But when there is question of offices which are to be discharged for the public good, the prince (or magistrate), by reason of his office, is bound by commutative justice toward the commonwealth to entrust them at least to worthy men. Toward the worthier men who are passed over, distributive justice is *per se* injured, unless, however, the offices are ordered solely to the common good,⁵ while most offices, indeed secondarily, are conferred for the benefit of those to whom they fall. Most Illustrious D. Waffelaert⁶ judges ecclesiastical offices and benefices to be of the former rationale, and our civil offices to be of the latter rationale.

⁵ Cf. C. de Lugo, vol. 2, disp. 34, no. 16.

⁶ *De Iustitia [On Justice]*, vol. 2, no. 406.

Indeed, a distributor can be bound by commutative justice toward the worthier person who has been passed over: **a)** If, under an onerous condition—for example, a competition—the selection of the best has been promised to the candidates; **b)** If the supreme distributor has bound the inferior distributors by commutative justice toward the candidates to select the best. (Rev. Fr. Lehmkuhl, vol. 1, no. 971.) That a strict obligation of justice cannot be proved as soon as a competition is present, however, is shown by the controversy set forth by Rev. Fr. Lehmkuhl.⁷

⁷ *Theologia Moralis [Moral Theology]*, vol. 1, no. 972. The matter comes down to this. A competition can be announced in such a way that a contract is entered into between the conferrer of the prize and the competitors concerning conferring the prize upon him who has won; the contest can also be established for this end: that those who are worthy be given the opportunity to prove their merit. The competitors are then content with the hope which they have in the good faith and equity of the prelate or prince of obtaining the office if they have won, provided that no peculiar reason should stand in the way.

138. There is also a broader acceptance of injustice, by which the deprivation of sanctifying grace is called injustice; but every culpable transgression of the law, every sin, is called iniquity.

139. Confirmation from a passage of the Apostle. Lest perhaps you wonder that the gravity of a sin against justice is derived from an offense against charity, the Apostle himself appears to have used a similar argument when he says in the Epistle to the Romans 13:9: “For: Thou shalt not commit adultery: Thou shalt not kill: Thou shalt not steal: Thou shalt not bear false witness: Thou shalt not covet: and if there be any other commandment, it is comprised in this word: Thou shalt love thy neighbor as thyself.”

Chapter II: The Consent by which Injury is Removed

St. Thomas, II-II, q. 59, art. 3, and *Ethics*, bk. 5, chap. 9; John Duns Scotus, *Commentary on the Sentences*, bk. 4, dist. 15, q. 2; Molina, tract 1, disp. 11; Lessius, chap. 7, doubt 3; C. de Lugo, disp. 8, sect. 1; Carrière, *De Iustitia et Iure [On Justice and Right]*, nos. 705–714; Waffelaert, op. cit., vol. 2, no. 5; Croll, *Disputationes Theologicae de Iustitia et Iure [Theological Disputations on Justice and Right]*, vol. 3, nos. 7–15; Pottier, op. cit., diss. 2, sect. 2, chap. 5, nos. 68–77.

Article I. Initial Formulation of the Question

140. Definition and parts of the question. 1. Above, no. 30, we saw that no one can be injurious to himself, that is, formally suffer injury from himself. We now ask whether, from the deed of another which you willingly bear, you can properly be affected by injury, or whether the action of another also cannot be injurious to you when you are willing.

The general reply is plain, and can at once be presented and confirmed by the maxim of both bodies of law: *No injury is done to one who knows and consents.*

2. But the proper force of this maxim, or within what limits it is contained, is less evident.

Then, concerning the consent itself by which injury is removed, it is usefully asked today what kind it must be: whether any assent whatsoever suffices— whether even one which you gave unwillingly, or only one which is in no part involuntary or, as they say, mixed with no involuntary element.

Finally, this other question is sufficiently related to the present question: to what extent an injury is done to one who is unwilling, but not reasonably so; that is, what reasonable cause permits one to invade another's property against the owner's will.

It is our intention to say something concerning these three matters, whether in the thesis or in the supplements.

141. Various opinions. 1. As regards the scope of the maxim, St. Thomas, Molina, and Lessius, at the places cited, prove it without applying any correction. C. de Lugo circumscribes its force to some degree by requiring a will which is civilly valid. Lessius, however, already recalls several who restricted the efficacy of consent to those things in which we could yield our right. He himself refutes this opinion. Nevertheless, it pleased some of the more recent authors, such as Carrière and Most Illustrious D. Waffelaert, who consequently judge that the cited maxim must be completed in this manner: "No injury is done to one who efficaciously and validly consents." Others, however, whom we judge to speak better, reject these exceptions. Thus Rev. DD. Crolly and Pottier.

2. But the consent by which injury is removed is declared by Molina to be such that it is voluntary even in a qualified respect, or is given with full knowledge and full will. Nor do I think that anyone theoretically disagrees. In practice, however, that condition has very frequently been neglected, since in our days nothing has been more frequent than to hear men who, under the pretext of consent of any kind whatsoever, attempted to excuse deeds unjustly done.

3. The third point is less thoroughly examined. Most pass over the matter in silence, so that their particular replies are destitute of certain principles. Those who discuss the argument somewhat, such as Carrière, no. 983, establish rather this rule: that a thing cannot justly be taken against the owner's will unless he is bound from justice to consent. Yet in practice the cited author himself admits that much is remitted from this rigor.

Article II. Formulation and Arguments of the Conclusion

THESIS IX

Without exception, this principle holds: "No injury is done to one who knows and consents."
Rule of Law 27 in the Sext. Cf. law 145, Digest, *On Rules of Law*.

142. I. THE STATE OF THE QUESTION. 1. THE POSITION CONCERNS the truth and force of the maxim which is proposed in the rules of both canon and civil law. We contend that it holds universally.

In order that the meaning of the assertion may be well perceived, one must place before one's eyes an action unjust of itself: a purchase below the just price, an insult, the wounding of another's body. We establish that, through the consent of him whose right is invaded, the character of injury by which one would otherwise sin against him is removed: not as though that action thereby always becomes licit or at least just; much less as though the agent thereby acquires a right to do it; but because that action cannot be formally unjust in relation to him who has given consent. These distinctions must be carefully noted, lest an occasion for error be taken from confusion.

2. THE TERMS ARE EXPLAINED, since the remaining things are already established.

To one who knows. This word could be omitted from the maxim without harm. Perhaps it is interwoven into it because in the Rule of Law it is presented thus: “Neither injury nor fraud is done to one who knows and consents,” and the word *fraud* corresponds more closely to the words *one who knows*. The meaning then would be: neither is fraud done to one who knows, nor injury to one who consents.

But if you prefer to assign its proper force to each word, knowledge excludes ignorance and inadvertence; consent excludes impediments of the will.

And consents. We understand consent that is: **a)** Morally spontaneous, that is, vitiated by no ignorance or fear and extorted by no necessity; and indeed **b)** Positive, not the merely negative permission of someone who does not resist or flee. Moreover, **c)** Consent must be directed not to the effect—for example, a death which is desired—but to the action itself by which harm is inflicted. The one consenting, however, need not approve this action, but it is sufficient that he will that nothing stand in the way on the part of his own right,¹ as if you were to say to someone prepared to kill you: “In order to diminish your guilt, I do not will to oppose my right to life, and on this part I do not resist.”

¹ Cf. C. de Lugo, disp. 8, no. 14.

Finally, **d)** we posit persevering consent; for in illicit matters there not rarely remains to the one consenting the continuing faculty of revoking consent.

It is further required that consent be given by a person naturally capable. For the consent of an insane person or an infant is morally null.

No injury is done. We admonish again that we do not say that such an action becomes morally upright, much less that a right has been acquired to do it, but that at least the objective malice of injury (against commutative justice) as regards the one consenting is removed from that action.

The *objective* malice, I say; for example, the guilt of formal injury would certainly have to be imputed subjectively to him who, in ignorance of the consent of the injured person, performed an act injurious of itself.

Observe that, if you wish to speak aptly, *injury* must be taken for an action formally violating another’s right, while *what is unjust* is said both materially and formally. Moreover, whether force is employed, or fraud and deceit—these being the two modes of injury—it comes to the same thing.

143. II. PROOF OF THE THESIS.

A principle which coheres with the essence of the thing holds without exception.

But. This principle coheres with the essence of injury: no injury is done to one who consents.

Therefore. It holds without exception.

The minor is proved by the same reasonings which manifest the truth of the maxim. We shall propose these two, the first of which we borrow from St. Thomas.

1) Injury is not done formally to him who does not suffer injury.

In other words, in order that an action be terminatively injurious, it is necessary that it be received in the terminus as an injury.

But. He who consents in the manner we have stated does not suffer injury. **Therefore.**

The minor is proved. It is repugnant that someone under the same respect be agent and patient (St. Thomas, II-II, q. 59, art. 3, corpus).

But. With regard to an action which is done according to our will, such as one to which we consent, we are agents rather than patients. “For the proper principle of acting in men is the will.” (St. Thomas, loc. cit.)

Therefore. It is repugnant that with regard to that action we be patients. But to suffer an action is prior to suffering it as injurious.

This is confirmed by this observation. There is no repugnance in the will by which injury is admitted being a command or a consent such as the principal author of an action is accustomed to have: suppose that you command another to kill you. But the principal author of an action must participate in all the guilt of the action, and consequently in the malice of injury, if there was any. Yet it is otherwise established that no one can do an injury to himself.

2) Injury signifies an action repugnant to a right which actually exists and perseveres.

But. The right of one who plainly consents to an action cannot actually persevere. **Therefore.**

Proof of the minor. A right does not actually persevere beyond the rationale of right, which is that a man’s personal independence be preserved. But this is plainly preserved so long as the property of a man who is unwilling in some respect is protected; and it remains intact through every action to which someone has freely consented.

Therefore. An action of this kind is not opposed to a right which actually perseveres.

This is confirmed. Because injury is a certain moral violence, which cannot exist without at least some interpretive resistance on the part of him who sustains it.

144. III. DIFFICULTIES.

1. THE CONSENT OF HIM WHOSE RIGHT IS INVADED CANNOT REMOVE THE RATIONALE OF INJURY. For:

a) He in relation to whom equality is departed from formally suffers injury. **But.** The consent of him whose right is invaded does not prevent equality from being departed from in relation to him. **Therefore.**

Reply. I concede the major. I deny the minor. For by that consent equality is changed, since things (in the broad sense) are possessed through the will (St. Thomas, here, reply to obj. 1). The equality of which there is discussion is that which is owed according to right. (Cf. no. 17.) But nothing is now owed according to right to him who has positively willed not to use his right.

b) No one does what is unjust except to someone suffering what is unjust. **Therefore.** If someone wills to do what is unjust, whether the other consents or not, the latter suffers what is unjust.

Reply. Except to someone suffering what is unjust quasi-materially or formally, I concede; formally, I deny, as above.

If one of the contracting parties has observed the other using fraud and deceit, and inwardly consents, although he who employs the fraud formally does what is unjust, the former suffers only

quasi-materially. And conversely, as St. Thomas observes, he who unknowingly does what is unjust does so materially against someone who, if unwilling, will suffer it formally.

c) He who pays a robber the money promised does so willingly, and yet suffers injury. **Therefore.**

Reply. He wills it, but with a will which is mixed with an involuntary element from fear.

2. THE EFFICACY OF THIS CONSENT IS NOT UNIVERSAL. For:

a) "There are cases in which a man cannot yield his right. Thus nature requires that the conjugal right be entirely inalienable." (Gury, vol. 1, no. 600.) **But.** Then consent is invalid. **Therefore.** It does not prevent the one consenting from suffering injury.

Reply. I deny the supposition. A confusion which has been a cause of error to many appears here. For the effect in question, an alienation of the right is by no means necessary; the actual non-use of this right suffices.

Instance. But. Nor can that use validly be renounced.

For Innocent XI condemned this proposition under no. 50: "Intercourse with a married woman, with the husband consenting, is not adultery." Gury, *ibid.*

Reply. The proposition affirming that such intercourse becomes mere fornication is condemned, as is evident from the end: "and therefore it suffices in confession to say that one has fornicated," I concede; the proposition affirming that such intercourse is adultery under another rationale is condemned, I deny.

For although we judge that adultery committed with the consent of the other spouse differs specifically from adultery committed without that consent, we by no means assimilate it to simple fornication. A threefold violation stands in the way: of the bond, of the sacrament, and, certainly often, of the rights of legitimate offspring. Cf. C. de Lugo, *loc. cit.*, no. 10.

b) He who kills himself, or another who consents, is punished by God and often by human law.

Reply. As unjust to himself or to this other person, I deny; as unjust to God and to the State, and as abandoning other duties, I concede.

In a homicide which is committed with the assent, indeed at the request, of him who is killed, there remains guilt which cannot be separated from suicide.

c) A ward suffers formal injury if you retain his thing which he willingly delivered to you, since without the will of his guardian he cannot validly donate it. **Therefore.**

Reply. I distinguish the major. That ward suffers injury so long as he consents that the thing remain with you, I deny; after, with his will changed, he wills to have it again, I concede.

Moreover, observe that we are already proceeding here outside the supposition. For we are treating of a person who is *sui iuris*, or who possesses his things through his own will. Someone is objected whose will, by positive law, must be supplied by the will of a guardian in relation to the exercise of rights.

Moreover, provided that the will is naturally capable, the principle still holds. For the effect of an invalidating civil law comes down to this: that there is no transfer of right; but so long as the consent

of him whose natural capacity is established perseveres, no injury is done to him. Therefore, neither do we agree with C. de Lugo when he excepts the case of civil incapacity.

Instance. Yet it could happen that human law renders the ward's will entirely invalid and positively forbids from justice that anything be accepted from the ward. **But.** What human law could do for the benefit of a ward, natural law has effected concerning the will of anyone in relation to certain rights.

Reply. Passing over the major, I deny the minor. For this is by no means proved. Moreover, because this disposition would be universal, it would change the very rationale of right, while the exception whose cause is the weakness of a certain special will preserves this rationale intact. The latter is accidental; the former would be *per se*.

Article III. Supplements to the Doctrine

I. COROLLARIES

145. "Speaking *per se* and formally, no one can do what is unjust unless willing, nor suffer it unless unwilling." St. Thomas, II-II, q. 59, art. 3. The former is evident because, since the proper principle of a human act is the will, what someone does apart from the will he does not do properly and *per se* (cf. St. Thomas, *ibid.*, art. 2). The latter has just been demonstrated.

But although injury ceases in each case, in the former case, since the subject of the right is able to resist, the objective moral character of injustice can remain in the action, which is not participated in on account of the subjective excuse of the one acting; while in the latter case, the resistance of the right having been removed, the action would only less properly be called materially unjust.

146. Why consent is required to be morally spontaneous. The arguments made well show that the character of injury is not removed from an action which of itself violates a right unless the consent is spontaneous. For he whose will resists in a qualified respect has that whereby he suffers (argument 1); nor would personal "independence" be sufficient if it were protected merely against external force, but not against moral coercion (argument 2).

It can be added that the abdication or non-use of a right is well compared with a donation; but a donation requires an intention of liberality and of itself requires a more spontaneous movement of the will. Cf. John Duns Scotus, *loc. cit.*, no. 24.

But the robber who, after money has been agreed upon, spares one's life, and the upright man to whom a traveler has promised money so that he might bring him aid, must be carefully distinguished. The helper, when he demands this payment, exacts nothing unjust of itself. Therefore this species is foreign to the present argument.

II. SCHOLIA

147. Although Christ, the King of Martyrs, and many martyrs willingly met death, it is nevertheless not established that they so yielded their right to life that they removed from the crime of their enemies this malice of injury against themselves. Yet it would be lawful to do this in order to diminish the sin of another, who would thereby in no respect become more emboldened to sin (cf. C. de Lugo, *disp.* 8, nos. 7, 14).

148. Other cases. Nor is an abdication of right signified by arguments of friendship and blandishments, which prove only forgiveness according to the evangelical precept or counsel. For the affection of charity according to which “we forgive our debtors” can be combined with an orderly vindication of right.

Finally, the distinction between consent to a harmful action and the abdication of the right to compensation which arises from injury must not be passed over. Often, for example, parents do not will that some damage be repaired by their children, although they were entirely unwilling that they be affected by that damage. Cf. C. de Lugo, disp. 8, no. 8.

149. Occasions for abusing this maxim of ours are afforded especially by contracts in which an inequitable price is established, whether for the purchase or lease of some thing, or for the hiring of labor. Cf. the encyclical *Rerum Novarum*, at the passage which will be explained after the thesis concerning the just price.

Parergon: The Taking of Another’s Property When the Owner is Unreasonably Unwilling

150. The object of the question. It pertains to the essence of theft, or of the injurious taking of another’s property, that the thing be taken from an owner who is reasonably unwilling. Thus all theologians reply with one voice. But when they are asked more precisely how that unreasonable protest of the owner is to be understood, “we do not find,” says Carrière,¹ “its meaning sufficiently explained among authors.”

¹ Op. cit., no. 983.

For it is asked whether it suffices that the owner be bound under some title to relinquish the thing, or whether it is necessary that he be obligated from commutative justice; the latter manner of speaking appears to please not a few. Cf. no. 141, 3.

151. The difficulty. Yet this principle does not square with the replies commonly received among those who write on practical theology. For, to pass over for the moment the case of a poor man in extreme need—which admits of various explanations, since some say that a rich man is bound by an office of justice to relieve such want, while others do not bind him from justice except not to resist—certainly a father does not owe from justice to support his son according to a station befitting him; still less is a husband obligated from justice to aid his wife’s family. Yet theologians permit both the son and the wife secretly to take from the goods of the parents or husband that with which each may provide for the end in question, unless perhaps they do not lack goods of their own.

Consequently, we judge that you will reply more severely than is right if you require an office of justice in the owner.

On the other hand, it does not suffice if the owner is bound under any title whatsoever to concede the thing. For who would permit a poor man who is pressed by a need which is grave simply, but not extreme, to snatch a notable sum from a rich man? Who would grant an outside person the opportunity to restrain an owner from useless or extravagant expenditures?

152. Approach to the solution. But if you investigate more deeply why these things are not lawful, an approach appears to us to be furnished to the genuine reply to the proposed question. For these

things are declared illicit because, although the owner is not reasonable when he neglects the office of charity or prodigally gives away his goods, nevertheless he is reasonably unwilling that either the poor, except in extreme necessity, invade his goods, or that an outsider interpose himself in the administration of his affairs.² Nor would it be difficult to demonstrate that right order— would be disturbed if the usurpation of another's property were rendered morally upright on account of causes of this kind.

² Cf. Carrière, loc. cit.; Billuart, *De Iustitia [On Justice]*, diss. 11, art. 6, at the end; Rev. Fr. Cathrein, *Moralphilosophie [Moral Philosophy]*, pt. 2, sect. 1, bk. 4, chap. 4, art. 3, §4, note (p. 308, 3rd ed.).

153. Solution. Since these things are so, we judge that a middle way must be held, which we define in this manner. It is lawful to invade the property of an unwilling owner when it is prudently judged that there is no reasonable cause—even when that invasion is considered—why the owner should take the deed ill.

Thus the things which we just said concerning the son and the wife are conveniently explained: since they are more closely joined to the father of the family, they more easily have an excuse for substituting themselves in his place. Nor is it less easily understood why a domestic person, more often than an outsider, can employ certain devices lest the owner badly abuse his things.

To this confirmation, which is taken from facts, an *a priori* argument is added. For a right is a faculty consonant with right reason. It does not appear that anyone can efficaciously insist upon a use of such a faculty which is wholly destitute of reason.

154. Corollary and general principle. But if matters are so, the cases stated above concerning a beggar in extreme need, a son, and a wife appear to be of a rationale not dissimilar, and they are reduced to one species. In the three cases, the right which remains to the owner over his things cannot be urged by him; the exclusion of these persons from these goods would be plainly unreasonable, so that the owner would not justly complain even of the manner in which, without permission, they take the same things. Therefore, as regards the use which they wish to make of it, they can treat the thing as unoccupied. Once they have made this use, they have validly and legitimately made the thing their own.

And so, to state now in a few words the rule concerning which we were asking: **Regularly speaking, the owner is reasonably unwilling that another invade his property, unless he is bound from justice to give it. Nevertheless, due place for just exceptions, to be weighed morally, is afforded by: the extreme necessity of the one taking; closeness of person; sometimes the evident and urgent utility of him whose affair is conducted against his will—**

as if you should restrain a man angry for the moment, even by employing some coercion, from a grave abuse.

Chapter III: Restitution

St. Thomas, II-II, q. 62; Cajetan, on II-II, q. 62, art. 2; John Duns Scotus, *Commentary on the Sentences*, bk. 4, dist. 15, q. 2; Molina, vol. 3, disp. 714 ff., especially disp. 714–717; Vásquez, *Opusculum de Restitutione [Short Work on Restitution]*, chap. 1; *Opusculum de Beneficiis [Short Work on Benefices]*, chap. 2, §3, dub. 17; Lessius, chap. 7, from no. 23; C. de Lugo, disp. 1, from no. 51, and disp. 8; Carrière, nos.

1021–1032 and 1103; Waffelaert, *De Iustitia [On Justice]*, vol. 2, nos. 222–230; Pottier, *De Iustitia et Iure [On Justice and Right]*, diss. 2, sect. 2, chap. 4, no. 25.

Article I. Introduction to the Disputation

155. The notion of restitution. 1. By the name *restitution*, from the proper force of the word, is signified some act of reintegrating, or of establishing again in the former condition.

Moreover, a twofold genus of restitution is acknowledged: of a person and of a thing.

2. The former, which directly affects a person, is someone's reintegration into a state or into a right from which he had fallen. This is restitution in full (*restitutio in integrum*). Thus, by the favor of the prince, after the time limit for appeal or prescription has elapsed, someone even today, at least in canon law, is restored in full so that he can nevertheless appeal or proceed in court. Thus, by the favor of the law, a minor, after a damaging contract, is restored in full, so that he can disregard the contract. This genus of restitution is not now under discussion.

3. The other genus regards a thing which, on account of someone's persisting right, must in some manner be returned to him. Hence, as Vásquez testifies, loc. cit., all agree with St. Thomas, here, art. 1, when he says: "To restore seems to be nothing other than to establish someone again in the possession or dominion of his own thing." We consider this restitution alone.

Understood in this manner, in a broader sense every payment of a debt to be paid from justice is called restitution, as though the thing owed to another were already considered to be his.¹ The contract itself is then a certain root of restitution. Cf. Lessius, chap. 7, no. 20.

¹ C. de Lugo, disp. 8, no. 17.

In a stricter sense, it is "the return of that which has been taken away through an unjust injury, at least materially; the return, I say, of it either in itself or at least in an equivalent";² or "the reintegration of damage injuriously inflicted." C. d'Annibale, *Summula Theologiae Moralis [Summary of Moral Theology]*, vol. 2, no. 195, 3rd ed.

² C. de Lugo, *ibid.*

4. Restitution differs from payment, of which it is a certain species; but in paying, formally, this alone is intended: that the prestation owed be made, not that another recover his own.

It also has a certain rationale of satisfaction, for in the broadest sense satisfaction is taken for any observance of a precept (C. de Lugo, loc. cit.). More precisely, however, satisfaction regards the person more, to whom it furnishes what is sufficient so that no reasonable cause for complaint arises or is preserved. Therefore satisfaction is made for an injury, and restitution for harm inflicted; properly speaking nothing is restored to God, since nothing can be taken away from Him, nor is restitution made for irreparable harm, while satisfaction is offered both to God and for irreparable harm. (Lessius, chap. 7, no. 18.)

156. The object of the disputation. Opinions. 1. We shall speak of four things: the nature of restitution, the virtue by which it is commanded, its roots, and its measure. Yet we shall join together the first two and the latter two objects, so that we divide the whole chapter into two parts.

2. Moreover, at present we attempt more to illustrate the truth than to settle a controversy, since only this one matter, and that formerly, fell into dispute: whether the obligation of restitution can flow from commutative justice alone or also from distributive justice.

St. Thomas does not appear to have touched this point, except that certain words by which, loc. cit., art. 1, reply to obj. 3, he tacitly acknowledges that restitution must be made by an inequitable distributor cause us some difficulty. And in truth Cajetan, loc. cit., Molina,³ and Vásquez⁴ contended that even he who had failed in the duties of merely distributive justice is bound to restitution: for by an inequitable respect of persons an inequality is introduced which must be removed through restitution; and therefore the distributor is bound by a personal obligation to repair the damage inflicted by his own fault.

³ Diss. 714, no. 1.

⁴ *De Restitutione* [On Restitution], chap. 1, nos. 6, 8; *De Beneficiis* [On Benefices], chap. 2, no. 117. We shall be less surprised at the opinion of Vásquez, since he appears to doubt whether distributive justice and commutative justice differ essentially from each other. Cf. on I-II, final diss., no. 54.

Yet the far more common opinion, even of Thomists, denies that an obligation of restoring flows from respect of persons as such. This will also be our position.

But when one comes to the reasons, such arguments are not rarely proposed as arouse a desire for a more efficacious argument. For most, with C. de Lugo, argue from the fact that you cannot restore anything on account of violated distributive justice: either from the common goods, since these already belong to private persons through distribution; or from the distributor's own goods, since there is question of a common debt. But in this manner they do not appear to complete the matter or resolve the contrary reasons. For they suppose, but do not prove, that the attribution was valid despite the resistance of distributive justice; they suppose that the debt remains common, while the adversaries judge that the debt, no less than the sin, has been made proper to the inequitable distributor.

Therefore, the common argument appears to require some polishing.

Article II. Formulation and Arguments of the Conclusion

§ 1. The Nature of Restitution and the Virtue by Which It Is Commanded

THESIS X

Restitution is always an act of commutative justice,¹ and its obligation proceeds solely from violated commutative justice.

¹ St. Thomas, II-II, q. 62, art. 1.

157. The state of the question. 1. THE INTENTION OF THIS PART. In this thesis we defend a twofold position. First, we propose that restitution as an act always pertains to commutative justice, so that, from whatever source the obligation of restoring arises, it is satisfied through an act of commutative justice. Then we establish that the remote or generic source of the obligation is some

violation of commutative justice, while denying at the same time that this duty can have its origin from another virtue.

2. THE TERMS ARE EXPLAINED.

Restitution, strictly taken for the return of that which has been unjustly taken away.

Is always an act of commutative justice. He who restores therefore exercises this justice; he who omits the restitution owed violates it.

Its obligation, insofar as it is confirmed by the law of nature. For it can also arise from law or compact.

From violated commutative justice. We will it to be violated in such a way that someone has formally suffered what is unjust (cf. no. 145); that is, we understand that objective injustice which someone unwillingly sustains.

Proceeds solely. The meaning, therefore, is not that this obligation is introduced through every violation of commutative justice, but through at least some violation (in the other part we shall say which one), and not through any violation of another virtue, reduplicatively. For commutative justice can be violated together with distributive justice.

158. II. PROOF.

1. Restitution is always an act of commutative justice.

An act in which the equality of justice is considered according to the comparison of thing with thing pertains to commutative justice alone (cf. no. 68).

But. This occurs in restitution. For this is intended through it: that whatever amount someone has less than what according to justice he ought to have, that much he now recover. **Therefore.** St. Thomas, art. 1. Cf. Molina, disp. 714, no. 1; Vásquez, loc. cit.

2. The obligation proceeds from violated commutative justice.

a) FROM SCRIPTURE. Ezekiel 33:14–15: “If ... that wicked man restore the pledge, and render what he had robbed ... he shall surely live, and shall not die.” Here the conditions necessary for the wicked man to obtain mercy are enumerated; among these restitution is placed. Cf. also Tobias 2:21.

This is confirmed from canon law, where canon 1, *Si res aliena*, Causa XIV, q. 6, contains these words: “If another’s property, on account of which the sin was committed, is not returned when it can be returned, penance is not performed but feigned.” And the words of St. Augustine² are cited, which were made Rule of Law 4 in the Sext: “The sin is not forgiven unless what was taken away is restored.”

² Epistle 153 to Macedonius (Migne, *Patrologia Latina*, vol. 33, col. 653).

b) FROM REASON.

Before we propose the argument, we wish this to be noted by readers: temporal things are returned perfectly in their proper species or body, but imperfectly—unless they are fungible—yet truly, in an equivalent. This is manifest in just exchanges, where neither is judged despoiled when each has exchanged his own thing for an equivalent. With this observation made, we argue thus.

Often, through a violation of commutative justice, someone's thing as his own is injuriously taken away from him.

But. Where this has occurred, commutative justice obliges one to the restitution of the thing in its proper species or, if this cannot be done, certainly in an equivalent.

Therefore. An obligation of restitution often arises from violated commutative justice.

The minor is proved. For restitution is an action by which, insofar as it can be done, the thing taken away returns to him from whom it was seized, or by which the goods of him who suffered a damaging injury are reintegrated. We add: *insofar as it can be done*, because it happens that the proper body of the thing has perished, whether another equivalent thing represents it or it was merely consumed or destroyed.

But. Where a thing which was someone's own is injuriously taken away from him, commutative justice commands that both actions in which restitution is contained be performed.

Therefore. Where this has occurred, commutative justice obliges one to restitution.

This latter minor is proved thus:

Commutative justice, which commands that his own things be preserved for each one, cannot sanction or hold ratified the objectively unjust taking of one's own thing which someone formally suffers. Hence it follows: **a)** That the thing seized, insofar as it subsists in itself or in an equivalent, remains in the dominion of him from whom it was seized: *the thing cries out for its owner*; and it also follows, **b)** That the injured person has less than, in the name of commutative justice, he ought to have from him who by a formally injurious action inflicted a loss of fortune upon him. For from this man, as from anyone else, he ought to have his things intact. But he does not have them intact until the things have been reintegrated insofar as can be done.

But. Commutative justice commands that the thing which has remained the owner's own be rendered to the owner, and that each person furnish to another as much as he owes in the name of the same justice.

Therefore. Commutative justice commands both things which we stated to be done.

N.B. Observe that by this rationale the obligation of restitution is already demonstrated in two ways: one real, from another's persisting dominion over some thing; the other personal, from the obligation not to injure another in his goods.

3. The obligation of restitution does not arise from another violated virtue.

The brief rationale is that no one is deprived of his own thing by the violation of another virtue.

But. Where no one is deprived of his own thing, an obligation of commutative justice does not arise, and consequently neither does an obligation of restitution, since it is established from the first member that restitution is an act of commutative justice. **Therefore.**

To the major. Virtues distinct from justice are not concerned with a thing which is owed to another, that is, with what belongs to another. No question can be raised concerning legal justice, since it urges the act of another virtue, whose rationale it will consequently suffice to consider.³ As regards distributive justice, if you conceive the right to an equitable distribution after the manner of a right

to a thing (*ius ad rem*), such as is had from a contract of promise, you will certainly perceive no reason for denying an obligation of restitution. But this notion is foreign to the truth. For from a contract we are obligated by commutative justice, while the right which belongs to a citizen to a share of common goods neither rests upon an immediate connection of the things to be distributed with the citizens, nor places in the distributor an office of commutative justice. Cf. nos. 7, 8.

³ Cf. above, nos. 44, 50.

This, I say, is a sufficient brief rationale. Yet it is useful to confirm the assertion by an argument which pertains more to distributive justice, concerning which alone doubt can arise.

An obligation of restitution is proved only from this: that someone possesses a persisting right to a thing unjustly withdrawn or denied to him, or that justice does not hold ratified an inequitable usurpation or attribution of the thing. Cf. the rationale given here above, no. 2. Moreover, if no right is established, whence do you have an obligation of justice?

But. A citizen does not have a persisting right to a thing badly distributed; but commutative justice, after the fact, holds ratified the attribution of a common thing which distributive justice forbade before the fact.

Therefore. The obligation of restitution falls together with its foundation.

To the minor. This proposition causes no difficulty if you recall what was said at the beginning (nos. 7, 8) concerning the specifically proper manner in which a citizen can call those things which belong to the community his own. The relation of things of this kind to him is mediate; nor does it remove the immediate possession of the thing by the community. But from that immediate possession it is validly argued that dominion over the thing was transferred even though the inequitable distributor sinned (provided that he did not exceed the limits of the power committed to him): for this is the force of the right of dominion, that according to the owner's will this right can efficaciously be yielded to another. From the relation which is only mediate it is rightly argued that no right to having the thing persists in the citizen who did not obtain what an equitable distribution would have brought him. For the right which was to the thing *as common* is no longer terminated at a thing which has become someone's private possession. Certainly, if the distributor had observed the rules of a just distribution, several citizens would have acquired certain things which they now lack: they have suffered what is unjust, yet not that which is contrary to commutative justice; nor did they suffer loss to their own property any more than a son who does not obtain from an undutiful father the many things which otherwise he would have made his own. Cf. below, no. 159, at the end.

159. III. DIFFICULTIES.

1. RESTITUTION IS NOT ALWAYS AN ACT OF COMMUTATIVE JUSTICE.

For if someone, after an inequitable distribution of common goods has been made, corrects the defect by supplying what he had given too little, he at once restores and exercises an act which belongs to distributive justice (St. Thomas, reply to obj. 3). **Therefore.**

Reply. I divide the antecedent. If he corrects the defect by supplying from his own goods, then he distributes, I deny; he restores, I subdistinguish: insofar as commutative justice perhaps was also violated, I concede; otherwise, I deny. If he corrects it by supplying from the common goods, then he restores, I deny; then he makes a new distribution, I pass over.

Therefore, formally he does not perform both at once.

It can also be answered in this manner, with St. Thomas here, reply to obj. 3—

By supplying what he owed, he distributes formally, **N.** For he attends to this: “That as much more be given to the other as he had less than he ought.” Compensation therefore occurs by comparing thing with thing; and hence it pertains to commutative justice. Cf. C. de Lugo, disp. 1, no. 54.

2. THE OBLIGATION OF RESTORING DOES NOT ARISE FROM VIOLATED COMMUTATIVE JUSTICE. For:

a) The act of injustice and the consequent suffering are transient. **But.** Restitution supposes the permanence of the injustice. (What has passed cannot be repaired.) **Therefore.** Restitution is not made on account of an act of injustice. (St. Thomas, art. 1, reply to obj. 2, and art. 2, reply to obj. 3.)

Reply. Distinguish the major. That action and suffering are transient, but they remain in their effect—whether in one’s own thing which has come to another, or in bodily injury, diminution of reputation, etc., **C.** Otherwise, **N.** **Contradistinguish the minor.**

N.B. The other things which St. Thomas here (art. 2) objects to himself are easily resolved, and pertain rather to explaining both by what rationale restitution can be made on account of injury to the body, reputation, or honor (replies to obj. 1, 2, 3)—where you should retain in memory the principle (reply to obj. 1): “It suffices that what is possible be recompensed”—and how he can be bound to restitution who prevents another from obtaining a good (ibid., reply to obj. 4).

b) Christ the Lord (Luke 11:37–41), after He had reproached the Pharisees concerning robbery and iniquity, adds these words: “But yet that which remains, give alms; and behold, all things are clean unto you.” **Therefore.** Alms alone are necessary for salvation after a sin against commutative justice.

Reply. Christ spoke thus, having obtained an opportunity to recall that precept, **C.**; as though alms alone supplied for all other things, **N.**⁴

⁴ “But yet that which remains, give alms,” in Greek *πλὴν τὰ ἐνόντα*, is understood by most today in this manner: “Rather, give as alms those things which are within (the cup, the dish), and behold, all things are clean unto you,” that is, you will attain true cleanness, both internal and external. According to this interpretation, the food and drink set before the guests are employed as examples of things which are to be bestowed upon the poor.

Others still favor the interpretation of Theophylact and Tertullian, who render *τὰ ἐνόντα* as “the things which you have, your goods.” Some translate: “Of those things of which there is abundance, according to your means.” Cf. Knabenbauer, on this passage.

Perhaps the expression *τὰ ἐνόντα* could be taken as an accusative of specification, so that the sense would be: “Rather, as regards interior cleanness, give alms; and you will be clean not only inwardly but also outwardly.”

Cf. Molina, disp. 716; C. de Lugo, disp. 8, no. 24.

For the Pharisees, who were accustomed to indulge avarice and were wholly occupied with frequent external and almost superstitious washings, had particularly to be admonished concerning good works,⁵ by which they might correct their vice and obtain from God the grace of repenting and attaining that interior purity of soul which they esteemed less. But sincere repentance contains the will to fulfill the connected obligations, and hence to restore what was unjustly taken away.

⁵ Not rarely in Sacred Scripture, alms stand for a good work in general.

c) There is no obligation of restitution when the creditor's remission is prudently presumed. **But.** This is prudently presumed when, from charity, the creditor ought to subordinate his own temporal loss to avoiding the spiritual ruin of his neighbor. **Therefore.**

Reply. C. the major. Deny the minor. And to the rationale, **distinguish.**

He ought to do this when his neighbor cannot avoid that ruin by himself, **C.**; when the neighbor's malice must be blamed, **subdistinguish:** in extreme necessity, **C.** or **Tr.** (On this elsewhere); in common necessity, **N.**

As C. de Lugo well observes, neither does this remission cause the neighbor who wills not to restore to escape fault. For the depraved affection of the soul stands in the way. Therefore the supposition must also be denied; or it must be required that each person make his things common lest a sin of theft be committed. (Cf. C. de Lugo, loc. cit.)

3. THE OBLIGATION OF RESTORING ALSO ARISES FROM ANOTHER VIOLATED VIRTUE. For:

a) He who omitted a duty of charity, piety, or obedience is often afterward obligated by these virtues to perform the same work which he omitted. **But.** This appears to be restitution. **Therefore.** Commutative justice alone does not impose this obligation.

Reply. Distinguish the major. Because, while the same necessity or the same precept of the superior persists, someone is urged as though the obligation were now first beginning, **C.**; by way of compensation which, without a new cause, is owed from the prior fault, **N.** **Contradistinguish the minor.** Yet, of itself, in the other virtues, "once that occasion has passed, the motive which such a virtue regarded does not persist." C. de Lugo, disp. 1, no. 52.

b) At least the violation of distributive justice establishes a present title to restitution. And indeed:

a) Although before the distribution and in the distribution itself, each person's portion is owed to him from distributive justice alone, because it is a common debt, the damage inflicted through an unjust distribution now becomes the distributor's personal debt, to be extinguished by restitution (Vásquez, chap. 1, no. 8, from Cajetan). **Therefore.**

Reply. I divide the antecedent. "The damage inflicted, etc.," **deny the supposition** that damage is properly inflicted: for someone properly suffers damage with respect to his own things.⁶ "Becomes a personal debt," **distinguish:** a debt of penalty (at least in relation to God), **C.**; a debt of a temporal thing toward him who was passed over, **N.** This would have to be proved.

⁶ "*Damnum* and *damnatio* are said from taking away and a kind of diminution of one's patrimony." Law 3, Digest, *De damno infecto* [On Threatened Damage] (XXXIX, 2). As is evident, we always consider the matter in relation to the person who was passed over: for toward the commonwealth, the bestower of an office is bound by commutative justice to choose at least one who is fit. Cf. no. 71.

Instance. Even he who violates distributive justice violates another's right. **Therefore.** He contracts toward the injured party a debt of repairing the violated right; this is a debt of a temporal thing.

Reply. I deny the supposition. The obligation of restitution does not arise on account of a violated right, but on account of the consequent inequality against a persisting right. Cf. the explanation given

in the demonstration itself, and Molina, disp. 715, no. 6.

Violation of a right of itself merely expresses a certain rationale of sin, to which the sanction of penalty corresponds, but not restitution.

Instance. An inequality is also introduced through the violation of distributive justice. **But.** Justice commands that this be repaired. **Therefore.** (Thus, more or less, Vázquez.)

Reply in two ways. 1) As C. de Lugo, disp. 1, no. 53. **C. the major. Distinguish the minor.** We are commanded by justice to repair an inequality which can be repaired, **C.**; the other, **N.**

But this one cannot be repaired. For through restitution, if it is made from the distributor's goods, the injured man receives nothing from the common goods, which consequently remain inequitably distributed; while restitution cannot be made from the common goods, since these have already been validly acquired by the citizens, as we proved in no. 158.

2) **Distinguish the major.** An inequality is introduced together with a persisting right to the goods which ought to have been received, **N.**; without such a right, **C. Contradistinguish the minor.**

β) He who was unjustly passed over has, from the inequitable omission itself, a title to receive compensation in a new distribution. **Therefore.** If he obtains anything, it will assume the rationale of a certain restitution.

Reply. Insofar as this omission partly establishes a present worthiness on account of which, formally, for example, a public office is conferred, **C.**; insofar as compensation for the omission would be the formal and sufficient rationale, **N.** For if, after a badly made distribution of offices, the candidate who had been worthier becomes less capable because of sickness or old age, nothing now remains for him to expect.

γ) He who in a distribution obtained the portion which belonged to a worthier person appears to retain another's property, or that which belongs to the worthier person. **Therefore.** Restitution must be made to the worthier person.

Reply. Deny the major. For what was owed to the worthier person merely from distributive justice became, after the attribution, the property of the less worthy person.

Instance. What someone receives without right, he receives invalidly. **Therefore.** That property is fictitious.

Reply. Distinguish the antecedent. What someone receives without right, that is, with injury to another, or without a title of acquisition, he receives invalidly, **C.**; without right, that is, without a title from distributive justice, but nevertheless without injury and with a title fit to transfer dominion, he receives this invalidly, **N.**

For nothing of itself prevents him who is undeservedly preferred from validly acquiring the portion of the common good attributed to him. No private person's right prevents it, for no one presently possesses any right in the thing itself; nor does the community's right to retain the thing, since it must be distributed; nor does the requirement of the common good, which rather demands—lest several goods be left with an uncertain owner, and lest all things in society be unsettled—that bestowals of common goods and offices be valid when made by one possessing the faculty, even if he

neglected the rules of distributive justice. Besides, no one has ever doubted the validity of an attribution once made.

§ 2. The Roots of Restitution and the Norm of Its Amount

THESIS XI

The root of restitution is twofold: another's thing accepted, and its injurious acceptance.

Moreover, the amount to be restored is defined in the former case by the amount of another's thing which you retain in its proper species or in an equivalent; in the latter, by the amount of the damage which you voluntarily inflicted.

Cf. St. Thomas, II-II, q. 62, arts. 3, 4, body and reply to obj. 1, art. 7.

160. I. The state of the question. 1. THE SENSE AND PURPOSE OF THIS CONCLUSION.

We demonstrated that the obligation of restoring remotely derives its origin from violated commutative justice; it therefore remains to inquire into the very causes from which the obligation of restoring proximately arises; in other words, by what rationale commutative justice must be violated so that there may truly be a place for that compensation.

Now, by the present proposition we contend that this rationale is twofold: the one material, the other formal; namely, another's thing accepted and its injurious acceptance. But because the effect must be measured by the cause, we add at the same time that, from the former root, the amount to be restored must be determined after the manner of another's thing which you have; from the latter, after the manner of the damage which you willingly inflicted upon another.

This appears, as is evident from the passages cited, to be the doctrine of St. Thomas, with whom the doctors commonly agree, such as Molina, vol. 3, disp. 717 ff.; C. de Lugo, disp. 8, no. 25 (as regards the roots); Ballerini-Palmieri, vol. 3, part 2, no. 107; etc.

2. THE TERMS ARE EXPLAINED.

The root is twofold. We call a root the fact from which the obligation of restoring proximately arises, and which consequently is its measure.

We employ the word *restitution* in the strict sense, "for the act by which, from justice, something is rendered in recompense for that in which someone has been defrauded unjustly, materially or formally,"¹ and not for every act by which that which is owed from justice is rendered.

¹ Molina, disp. 717, no. 1.

Otherwise, as was said, contract would have to be added as a third root, and perhaps other things as well. Cf. Molina, disp. 717, no. 2.

Another's thing accepted: This obtains whenever, from whatever cause, honorable or not, another's thing exists with someone, without the owner's consent, and he has thereby become richer.

And its acceptance, formally, is injurious. This expression is understood in a broad sense, whereby "within its scope it comprises the unjust usurpation of a thing, the unjust infliction of damage, and the unjust retention of a thing owed to another";² or, more briefly: any unjust infliction of damage.³ For

“whoever causes damage to someone appears to take away from him that in which he damages him,”⁴ so that an unjust infliction of damage can be called an injurious acceptance of a thing.

² Molina, loc. cit., no. 1.

³ C. de Lugo, loc. cit., no. 25.

⁴ St. Thomas, art. 4, body.

Moreover, the amount to be restored is defined in the former case by the amount of another’s thing which you retain in its proper species or in an equivalent. For not rarely the place of the thing which perished is held by the price received, the profit made, or the saving of one’s own good, etc. Casuists must be consulted concerning the various cases.

In the latter, by the amount of the damage, that is, of the detriment brought upon another’s patrimony.

Which you voluntarily inflicted, that is, with theological fault. What if this was light? We shall touch upon the matter very briefly in the scholium.

N.B. We speak while leaving aside contract or positive law, by which someone can be obligated, for example after the sentence of a judge, to repair damages inflicted from merely juridical fault.

161. II. Proof.

N.B. The former part is already evident from the manner in which we made the obligation of restoring proceed from violated commutative justice. For the twofold root corresponds to the twofold obligation of restoring which was proved there. Cf. N.B., p. 166.

1. That root is twofold. As many as are the rationales by which an undue inequality is introduced, so many will be the roots of restitution. We call an inequality undue when it is opposed to a right which one presently possesses, and consequently to the present duty of another.

But. Both have been stated. **Therefore.**

The major is evident, because restitution must be made for this reason: that someone has less than he ought to have. (Cf. St. Thomas and the preceding thesis.)

To the minor. Indeed:

a) Both because his thing has come to another and because he suffers damage from another’s injury, someone has less than he ought presently to have by his own right. Nor does it stand in the way that, from this latter root, it frequently happens that he who ought to restore is compelled to take from his own goods, so that he thereby suffers detriment and himself has less than before. For this diminution of his own patrimony occurs without injury to anyone and introduces no undue inequality. Hence it cannot stand in the way of the obligation of repairing the damage. Just as from your own goods you are bound to make provision for health and the necessities of the physical order, so also for the moral obligation of observing another’s rights. To use other words, the obligation flowing from this root is personal to him who is guilty of the injury. But it is a perpetual principle that you ought to fulfill your personal obligations from your own goods.

b) There are no other causes: not the injury of one who consents, or an injury without harm, since they introduce no inequality; nor harm that is inculpable theologically, since it introduces no undue inequality. For the order of justice is part of the moral order; but indeliberate acts are outside this

order. Hence commutative justice sanctions this one thing: that each person have his own goods, insofar as this depends upon a voluntary human deed.

2. Concerning the amount to be restored. When the cause ceases, the effect ceases.⁵

⁵ Cf. above, no. 143, argument 2.

But the former cause operates only concerning a thing which, and insofar as it, is detained by another without right; but once restitution has been made of another's thing which was possessed in its proper species or in an equivalent, no thing of another is now detained by another without right. **Therefore.**

As regards the latter cause: the whole damage which you voluntarily inflicted manifests that which you had injuriously accepted from another (as we now employ those words in the broader sense), or that which you owe.

162. III. Difficulties.

1. Someone can suffer damage even from another's deed which is not injurious, and consequently can be situated in an inequality. **But.** Inequality must be repaired through restitution. **Therefore.** This is a third root.

Reply. Distinguish the major. To suffer damage such that an undue inequality is introduced, **N.;** an inequality in the broader sense, or a diminution of fortune, **C. Contradistinguish the minor.**

Undue inequality alone must be repaired by restitution. Not everyone who has less than before has less than he ought. How many causes there are by which goods of fortune are lost, and which furnish no just complaint against anyone! Come now, this one thing must be considered here: does someone have less than he ought, or than belongs to him from commutative justice, or otherwise?

2. When the cause is culpable, the whole damage arising from the injury appears to require compensation, and not merely that part which is in some manner voluntary. For the whole appears to be contained within the scope of that cause.

Reply. Distinguish. Often, then, this will be the material rationale of the amount, **C.** That it will ever be the formal rationale, or always the material rationale, **I deny. And contradistinguish the minor.**

For no one commits an injury unless willing it (St. Thomas, II-II, q. 59, art. 3). Therefore, if any part of the consequent damage was in no manner voluntary, this does not pertain to the formally unjust acceptance, and consequently is not to be compensated under this title.

By these two replies we appear to have touched upon the principal difficulties which can be opposed to our thesis.

Article III. Supplements to the Doctrine

I. COROLLARIES

163. The mind of St. Thomas. Although St. Thomas is silent concerning the question whether the obligation of restoring arises from violated commutative justice alone or also from the violation of

distributive justice, the doctrine which we defend appears to be so firmly established upon the principles which the Holy Doctor delivers throughout the entire disputation on Restitution that it can scarcely be doubted that we have answered according to his position. This will be most evident to one who considers the rationale of our demonstration.

The difficult passage in q. 62, art. 1, reply to obj. 3, is explained suitably enough if you suppose that St. Thomas is treating of a distributor who at the same time—as frequently occurs—violated commutative justice.

164. Comparison of the two roots. The former root gives rise to a real obligation: insofar as you possess another's property; the other, a personal obligation: insofar as you have sinned against another. In both cases there is question of correcting an undue inequality; but in the former, it is undue with respect to all who detain the thing; in the latter case, with respect to him who inflicted the injury.

Yet the one root does not exclude the other. And this is the difference between him who makes a profit from an injury and him who makes no profit: the former is obligated to restore for a twofold rationale, the latter for only one. St. Thomas, art. 6, body.

165. Concerning error about the person upon whom damage is inflicted. The fault of injustice, or injury as such, is not the root of restitution, but the inequality introduced by it on the part of the thing.¹ Hence, if someone, erring about the person, should inflict damage upon the goods of Titus, which he thought were those of Caius, although he was not formally injurious to Titus, he appears to us, as common sense cries out, to be bound to restitution toward Titus. For as soon as you bring detriments upon the goods of another who is unwilling, by whatever name he may ultimately be called, in fact you necessarily—you contract an obligation of furnishing an equivalent in exchange. We shall state it briefly thus: that error removes the personal offense, or injury, which, moreover, is not repaired by restitution; it does not remove the voluntary acceptance of some other person's thing. While thinking himself injurious to Caius, he knows at the same time that he is usurping the thing of some other unwilling person; nor was he mistaken in this.² Cf. Molina, treatise 3, disp. 30; Ballerini-Palmieri, *Opus morale* [Moral Work], vol. 3, part 2, from no. 250 to no. 267, against C. de Lugo, disp. 17, nos. 75–76, and St. Alphonsus, bk. 3 (elsewhere 4), no. 628, whose authority, nevertheless, we have no thought of diminishing in the least.

¹ St. Thomas, q. 62, art. 3; Molina, disp. 715, nos. 5, 6.

² And in this the difference is apparent from him who, during a brawl, beyond his intention wounds or even kills the mediator. For this action was involuntary even as the wounding or killing of a human being; that external action was wholly beyond the intention.

166. Restitution in another species is imperfect, since the owner does not recover the proper body which he possessed, nor did he consent to the exchange. There is therefore a certain part of the damage which is then not repaired, because it cannot be repaired.

II. SCHOLIA

167. Concerning uncertain debts. Very noteworthy, as seeds of many resolutions, are the words which St. Thomas has in q. 62, art. 6, reply to obj. 1: “Restitution is not principally ordained to this, that he who has more than he ought should cease to have it, but to this, that what is lacking to him

who has less should be supplied; hence, in those things which one person can receive from another without detriment to the latter, restitution has no place.”

But from this someone will ask why theologians “all agree that those things which are owed from an unjust acceptance are to be rendered to the poor if the owner or his heirs are not found”;³ in what manner, in other words, they oblige him who has become rich from a formal injury to substitute the poor in the place of the owner to whom restitution cannot be made, because, for example, it is unknown which one among many he is.⁴

³ C. de Lugo, disp. 6, no. 134.

⁴ For if the doubt is confined to a few, the thing is to be divided among them.

In truth, the doctors are accustomed to differ more concerning the motive than concerning the conclusion.

For some argue from natural law, others from the law of nations.

1. Among those who appeal to natural law, many, with St. Thomas,⁵ assign the thing to the poor, because, when the owner is wholly hidden or is so absent that the thing cannot morally come into his hands, the only manner of restoring which remains would be that the thing be converted into alms which would bring spiritual utility to the owner. Yet this position has already been rejected by Lessius;⁶ and it appears that it must be abandoned chiefly for this reason: that the thing cannot remain in the patrimony of him who is cast down from every hope of recovering it. For dominion of ownership cannot be conceived where there is no faculty of using or disposing, not even in hope.

⁵ II-II, q. 62, art. 5, reply to obj. 2.

⁶ Chap. 14, no. 35 ff.

Others, therefore, with whom Rev. Fr. Lehmkuhl agrees,⁷ judge that restitution to the poor is commanded on account of the common good of human society. But although it is sufficiently easy to understand that nature positively opposes an appropriation which, by favoring thieves and robbers, would be contrary to the common good itself, we perceive less clearly why the thing must be bestowed upon the poor, and why it would not suffice for justice that the unjust possessor cast the thing away from himself, for example, by throwing it away.

⁷ Vol. 1, no. 1022.

2. Hence we are not wholly averse to the position which ascribes the obligation to the law of nations, at least of Christian nations, perfecting that which nature desired; and which, on account of the evident utility of society, extends the canon law whereby, even when the injured person is unknown, illicit usuries and the profit made from an office obtained simoniacally are said to be restored to the poor.⁸ This already pleased Vásquez,⁹ Lessius, loc. cit., Laymann,¹⁰ St. Alphonsus,¹¹ and is sufficiently proved by Ballerini,¹² and is held as more probable by Génicot, vol. 1, no. 552.

⁸ Chapter *Cum sit nimis*, 16 X, *De Iudaeis, etc.* [On the Jews, etc.] (bk. 5, tit. 16), and chap. *Cum tu*, 5, *De usuris* [On Usuries] (bk. 5, tit. 19).

⁹ *Opusculum de restitutione* [Short Work on Restitution], chap. 5, §4, doubt 1.

¹⁰ *Theologia moralis* [Moral Theology], bk. 3, treatise 2, chap. 9, no. 2.

¹¹ Bk. 3 (elsewhere 4), no. 589.

¹² *Opus morale* [Moral Work], treatise 8, part 2, chap. 2, no. 186.

This position is confirmed because the faculty which the Holy See employs to remit an obligation of this kind is more easily explained through it. It also then appears clearly why he who possesses without fault a thing whose owner is uncertain can safely retain it for himself, since no argument from the common good or from a positive disposition of law can be urged against him.

3. Yet these things are explained with equal ease by a third form of the argument, not dissimilar to the rationale of St. Thomas, which we judge is to be preferred. It is of this kind:

He who is guilty of a formal injury is obligated, not only as a possessor of another's thing, to restore it, but is bound in addition by a personal obligation to repair the damage according to his powers. For the root of restitution is twofold (no. 160).

Come now, a thing whose owner is entirely uncertain can be regarded as a thing belonging to no one (*res nullius*); and hence it can safely be occupied by him who obtained it without fault.

But if you possess the thing from an injury, that personal obligation of restoring nevertheless persists. Through your fault it occurred that another lost dominion over his thing. Therefore you ought to repair this damage to him by restoring the value.¹³ Nor is it less evident that an obligation of this kind is fulfilled if you make that use of the thing to which the injured person is not reasonably unwilling. For we saw in no. 150 ff. that this usurpation even of another's thing is not opposed to justice. Hence we argue thus:

¹³ Is it not the case, for example, that if you burn another's forest, his dominion is lost, and you are nevertheless bound by an obligation of restitution? For what reason? Because another title of restitution can be urged against you which cannot be alleged against one acting in good faith. Similarly, in the present case, the loss of the thing by its former owner frees the possessor in good faith, but by no means the other.

He who is guilty of an injury is bound to restore in that manner which alone is available. **But.** This manner is an attribution made to the poor or to a pious work. **Therefore.**

And the minor is proved. a) That attribution is a manner of restoring. For he who cannot recover his thing or its equivalent price is not reasonably unwilling that the thing or the price be applied to the poor or to a pious end. b) It is the only manner of restoring. For he is rightly judged unwilling that either his goods be prodigally scattered or the person who possesses them in bad faith profit from them. **Therefore.**

But if this is the rationale, even an unjust damager who did not profit from another's property is bound, when the injured person is lacking, to restore to the poor.

168. The necessity of making restitution is not a necessity of means but of precept, as all now acknowledge. For no other power is present in restitution for effecting justification and salvation than that which is commonly possessed by every precept. Of itself it contributes nothing positively necessary for salvation, but merely removes the obstacle of sin. Cf. Carrière, no. 1028.

169. Concerning the necessity of distinguishing the two roots. There are some who think that both roots of restitution can be reduced to one, namely, unjust acceptance, relying upon this rationale: that he who knowingly retains another's thing now accepts it unjustly. But less suitably, as it appears to us. For:

- a) The inequality which arose from an honorable act and that which flows from a formal injury are formally dissimilar; and
- b) They differ no less in their consequences as regards the amount to be restored and the excuses.

Furthermore, to answer the rationale alleged, if someone, immediately upon becoming aware of another's thing possessed by him, relinquishes it, at no instant did he owe anything from unjust acceptance (by restitution he forestalled this cause); but he who delayed restitution without right is now bound from both causes, as is elicited from St. Thomas, II-II, q. 62, art. 6, body. Hence we wholly approve Molina, vol. 3, disp. 717, no. 1, when he affirms that both roots "are especially to be kept before the eyes of the mind in the matter of restitution."

170. You will ask whether the obligation of restitution is positive or negative.

The obligation of restoring is founded upon the negative obligation not to violate another's right to preserve his own things.¹⁴ But from this many, after C. de Lugo,¹⁵ contend that the obligation itself is negative. We prefer, with Lessius¹⁶ and Rev. Fr. Palmieri,¹⁷ to hold the answer which a first consideration of the matter suggests, and to regard it as affirmative. For in order that it be fulfilled, it of itself requires a positive act of rendering; and this plainly accords with the notion of an affirmative precept handed down by Suárez.¹⁸ But C. de Lugo himself must pass over to our camp sufficiently openly in order to escape various difficulties, for example, that you are excused more easily from restitution than from a negative precept. Cf. C. de Lugo, disp. 13, nos. 49, 50.

¹⁴ St. Thomas, art. 8, reply to obj. 1; Molina, disp. 716, no. 4; Lehmkuhl, vol. 1, no. 941.

¹⁵ Diss. 8, no. 8.

¹⁶ Chap. 7, no. 49.

¹⁷ *Opus morale* [Moral Work], treatise 8, part 2, chap. 2, no. 108.

¹⁸ *De legibus* [On Laws], bk. 2, chap. 10, no. 1.

171. You will ask what obligation of restoring is produced by grave damage unjustly inflicted upon another, but with theologically light fault.

Some, with Molina,¹⁹ oblige one to repair a part proportionate to the fault; others, such as certain more recent authors, oblige one to repair the entire damage under grave obligation; Vásquez²⁰ also defends the obligation of compensating the whole, but is silent as to whether it binds under grave obligation; the most common position denies that there is a grave obligation.

¹⁹ Diss. 698, no. 7.

²⁰ *De restitutione* [On Restitution], chap. 2.

But the position of Lessius²¹ and C. de Lugo,²² who deny even a light obligation, is more pleasing. The rationale is that nature, where it itself defines the whole and nothing is changed by the free will of a legislator or of those making a compact, wills an obligation which is accommodated to the matter; and, from another consideration, venial fault is unequal to producing a grave obligation. Imperfect deliberation or lesser advertence, just as it removes the voluntariness required for a grave vow or contract and does not produce a light obligation of fulfilling it, is likewise practically nothing in relation to inducing the grave burden of restitution.

²¹ Chap. 7, no. 28.

²² Diss. 8, no. 50.

And would it not, as Lessius says, be very pitiable for a man to be obligated throughout his whole life, for example, to a thousand thousand francs, unless he should prefer to remain guilty of venial sin?

171bis. You will also ask whether or not the power of an intention to inflict damage can be so great that, on account of it, an action becomes unjust and introduces a debt of restoring.

This is a celebrated question, to which many respond by denying that efficacy of the intention. Indeed, it is more commonly thought that no obligation of restoring arises from the intention of inflicting damage which would not otherwise have existed. Yet at the same time, most authors, when they inquire concerning the obligation by which the losses that creditors suffer from the killing of a debtor must be repaired, command him who killed with the intention of harming them to restore, but by no means him who, led by another intention, committed the homicide even though the damage to the creditors was foreseen.²³ St. Alphonsus, bk. 3 (4), no. 633, thinks entirely in this manner.

²³ Cf. Lehmkuhl, *Theologia moralis* [Moral Theology], vol. 1, no. 901. Yet he himself is consistent with himself.

With C. de Lugo, *De Iustitia et Iure* [On Justice and Right], disp. 8, sect. 6, and disp. 18, nos. 98–101, we hold the position of those affirming, yet employing a certain distinction by which our position is at once tempered and illustrated.

For among actions, some merely contain the exercise of a right or have within them no true power of effecting damage; through others, by contrast, true efficacy toward another's damage is exercised.

Therefore, an action by which you exercise your right cannot be rendered objectively injurious by a perverse intention. Hence he is not guilty of injury who, from hatred, brings a just lawsuit against someone, or from hatred pronounces a just sentence against him. Nor can an evil will take the place of causality.²⁴ Hence, he who has merely given an example of inflicting damage, which others imitated and thereby also inflicted damages, will not have to repair those damages, although he knew and willed the efficacy of his example. For by the example alone you cannot be either physically or morally the author of such damage. But where you exercise physical causality toward another's damage, that is, where the physical efficacy of your action, sufficient from the circumstances, deprives another of his right or his thing, or brings detriment upon another's things, it can occur that, according to the varying intention, an obligation of restitution is or is not produced.

²⁴ Cf. St. Alphonsus, bk. 3 (4), no. 584.

For, as we said in the first part of the *Questions*,²⁵ *per se*, as widely as the foreseen efficacy of my causality extends "in the concrete," so widely does the moral imputability of the effects extend. This imputability, indeed, in order that it be human, is circumscribed by effects which are not too remote, and is also removed on account of the excellence of the good intended, as was explained in the same place. But it is not inhuman to prohibit me from willing, from an intention to inflict damage, even a remote effect; and it is no less evident that, where the intention was to inflict damage, an excuse sought from one's own good wholly fails. Therefore there is then no rationale why an effect which is truly mine should not be imputed to me. Nor should you say that, on account of my intention, a closer connection between the effect and the action is not introduced. For a connection sufficient of

itself for the effect to be imputed is present, provided that it does not bind men with excessive solicitude. Nor should you add that, without a violated right, there is no root of restitution. For from what has been said, it is sufficiently evident that there are rights which can be expressed thus: *There is a right that such a thing not be done from an intention to inflict damage*. Nor, finally, should you object that external juridical relations cannot be affected by internal intentions. For intentions which inform external actions must not rarely be inferred in the external forum. And, aptly for our matter, in Roman Law, Digest, law 2, *De aqua et aquae pluviae arcenda* [On Water and the Warding Off of Rainwater] (XXXIX, 3), this is adduced from Paul: “The same Labeo says that if a neighbor diverted a river or torrent so that water would not reach him, and in this manner it came about that harm was done to his neighbor, an action for the warding off of rainwater cannot be brought against him.... This opinion is the truer one, provided that he did not do it with this intention, that he should harm his neighbor, but lest he should be harmed himself.”²⁶

²⁵ *Questions on Human Acts*, where the double effect is treated.

²⁶ It is evident that this example is adduced by us for the purpose of showing that the efficacy of intention is acknowledged, and not as though we approved the example itself.

Moreover, unless you concede our position, you will arrive at these remarkable consequences. Caius wills to confer a benefit upon Titus in a certain place. Indeed, being hostile to Titus, I determine to prevent it. It suffices if, by force or fraud, I prevent Caius from being in that place in the presence of Titus. I will accomplish this equally whether I prevent Caius or Titus from going to that place. What moral difference is there if, with the intention of harming Titus, I deceive Caius by fraud rather than Titus? Yet, in order to speak consistently, those who deny to intention the power of inducing an obligation of restitution will have to distinguish thus: if by force or fraud you have impeded Titus, he will be able to proceed against you concerning the lost benefit; but by no means if you have impeded Caius. For certainly, if the intention of depriving Titus of the right of enjoying Caius’s benevolence is excluded, you can block the road even by force against Caius, without any obligation toward Titus.

We confirm the same thing from the fact that a formal cooperator is condemned by all to restitution, even if he furnished only that assistance which, if the cooperation had been material, would have introduced no obligation. Yet do not a formal and a material cooperator differ from each other by intention alone?

Besides, our position appears also to have pleased Vásquez on account of the things which he writes in *De Restitutione* [On Restitution], chap. 2, §2, doubt 4: “But if [the damage] is not probable,²⁷ if he intends it, he will be bound, because he gave an efficacious cause of it, because it followed from his deed voluntarily, intended *per se*, and thus that external damaging of one’s neighbor was willed, and hence unjust.”

²⁷ *Probable*, that is, unless we are mistaken, so connected that, with every depraved intention excluded, it is imputable *per se*.

We shall therefore say: **whenever true causality, at least probable, of my action toward another’s detriment strictly taken is foreseen, an intention to inflict damage removes the rationale of accidental damage and introduces a debt of repairing the damage.**

We require *true causality*, from physical or moral efficacy, so that we exclude the power which cannot be present in an example except *per accidens*. Hence we can, not without reason, refer the causality

which we require to the genus of causality *per se*, provided that it is taken together with all the circumstances.

We posit causality which is *at least probable*, and not merely possible, so that someone can seriously intend another's damage through it. Thus, in a place where it is not likely that an enemy will pass through, I cannot seriously intend his death by discharging a weapon. A homicide of this kind will therefore always be accidental.

We add, detriment *strictly taken*, by which someone's thing or the utility of his right is diminished. Thus, a poor man has no right to the benevolence of a rich man; nevertheless, he possesses the right of gaining this benevolence for himself or of enjoying it. Hence he cannot be cast down from this right by fraud or force. But where someone exercises his own right, he cannot bring upon another a detriment that is strictly such; hence he will never be injurious.

172. Finally, you will ask, by occasion of those things which were said at the end

of the proof, what the difference is between a right to a thing (*ius ad rem*) such as proceeds from a compact and the right which a citizen has to common goods. For in both cases the thing under discussion is not yet one's own, and in both cases there is a certain right of having the thing, by means of a prestation which is to be made either by the one making the compact or by the distributor. But in the former case the obligation of commutative justice is the intermediary; in the other case, only that of distributive justice. He who relies upon a stipulation can already call his own or proper, not indeed the thing, but the prestation by which the debtor is bound and the thing will become the creditor's; but he who relies upon a right of distributive justice has nothing immediately proper to himself under this title.

Question V: On Socialism and the Private Possession of Goods

Chapter I: On Socialism

Aristotle, *Politicorum liber secundus* [Book Two of the Politics]; St. Thomas, *Commentaria in libros Politicorum* [Commentaries on the Books of the Politics]; Pöhlmann, *Geschichte des antiken Communismus und Socialismus* [History of Ancient Communism and Socialism]; Thonissen, *Le Socialisme dans le passé* [Socialism in the Past], *Le Socialisme et ses promesses* [Socialism and Its Promises]; P. Janet, *Les origines du Socialisme contemporain* [The Origins of Contemporary Socialism]; Cathrein, *Der Socialismus* [Socialism], *Das Privatgrundeigenthum und seine Gegner* [Private Landownership and Its Opponents];¹ P. Leroy-Beaulieu, *Le Collectivisme, examen critique du nouveau Socialisme* [Collectivism: A Critical Examination of the New Socialism]; Pachtler, *Die Ziele der Socialdemokratie und die liberalen Ideen* [The Aims of Social Democracy and the Liberal Ideas];² Castelein, *Le Socialisme et le Droit de Propriété* [Socialism and the Right of Property]; Capart, *La Propriété individuelle et le Collectivisme* [Individual Property and Collectivism]; Antoine, *Cours d'économie sociale* [Course of Social Economy], chaps. IX and XVI; H. Pesch, *Liberalismus, Socialismus und Christliche Gesellschaftsordnung* [Liberalism, Socialism, and the Christian Social Order]; Biederlack, *Die sociale Frage* [The Social Question], chap. 3; Kerby, *Le Socialisme aux États-Unis* [Socialism in the United States]; P. Verhaegen, *Socialistes anglais* [English Socialists]; Holaind, *Le Socialisme américain* [American Socialism];³ Maisonnabe, *La Doctrine Socialiste* [The Socialist Doctrine]; E. de Laveleye, *Le Socialisme contemporain* [Contemporary Socialism]; Van Overbergh, *Les caractères généraux du Socialisme scientifique d'après le manifeste communiste* [The General Characteristics of Scientific Socialism According to the Communist Manifesto]; Schaeffle, *Quintessenz des Socialismus* [The Quintessence of Socialism];⁴ Anton Menger, *Le droit au produit intégral du travail, étude historique* [The Right to the Entire Product of Labor: A Historical Study];⁵ G. d'Eichthal, *Socialisme, Communisme et Collectivisme* [Socialism, Communism, and Collectivism]; (Anonymous), *Réfutation du socialisme*, published by the Union Nivelloise [Refutation of Socialism, published by the Nivelles Union].

¹ From the pamphlets concerning the social question published by writers for the periodical *Stimmen aus Maria-Laach* [Voices from Maria Laach]. They were rendered into French by D. Fritsch.

² From the same series of pamphlets.

³ We shall cite the French edition, prepared by D. Buron.

⁴ That pamphlet was taken from the larger work *Bau und Leben des sozialen Körpers* [Structure and Life of the Social Body], and was rendered into French by the socialist B. Malon.

⁵ That celebrated work of the Viennese professor was rendered into French by A. Bonnet. We shall cite the French edition, which has a preface prepared by Ch. André.

Professor Schaeffle's work already greatly favors the economic tenets of collectivism. Among the very doctors of present-day socialism may be mentioned: K. Marx and F. Engels, *Manifeste du Parti Communiste* [Manifesto of the Communist Party];⁶ K. Marx, *Das Kapital* [Capital];⁷ Lasalle, *Kapital und Arbeit* [Capital and Labor];⁸ B. Malon, *Précis de Socialisme* [Summary of Socialism], *Le Socialisme intégral* [Integral Socialism]; Destrée and Vandervelde, *Le Socialisme en Belgique* [Socialism in Belgium]; Bernstein (among the supporters of moderated Socialism), *Die Voraussetzungen des Sozialismus und die Aufgaben der Sozialdemokratie* [The Preconditions of Socialism and the Tasks of Social Democracy]; H. George (the author of agrarian socialism), *Progress and Poverty*, *La condition des ouvriers, lettre au Pape Léon XIII* [The Condition of

the Workers: A Letter to Pope Leo XIII];⁹ Jean Jaurès, *Études socialistes* [Socialist Studies]. In addition, the pamphlets which relate the deliberations customarily held among socialists must be consulted. Several books by Rev. D. Winterer can be referred to this class, for example, *Le Socialisme international* [International Socialism].

⁶ It first appeared in German.

⁷ There exists a French translation of the first volume of this work, which surpasses the German edition in clarity, or rather in a lesser obscurity of style.

⁸ B. Malon also rendered this work into French.

⁹ We shall use the French edition.

Article I. Various Notions of Present-Day Socialism

173. What force underlies the word. Socialism, from the force of the name,¹ is contrary to *individualism*. Hence, as regards the matter:

¹ If D. Pioger (*Revue Socialiste*, 1896) is to be believed, the author of the name is Pierre Leroux, who published several writings in France in which he attacks the present regime of property and wills that men become more equal among themselves. He died in Paris in the year 1871, while *La Commune* was raging.

a) It can be applied to every doctrine which attacks economic liberalism, by which, with the positive protection of law denied, each person was left to his own judgment, abilities, or weakness. In this manner there can also be question of *Catholic socialism*.² Indeed, sometimes the word socialism has been extended more broadly to every system which intends to change for the better the present association of men.³ Recently, de Laveleye⁴ constituted the generic rationale of socialism by these two notes: the pursuit of greater equality and the invocation of the protection of law or of the State.

² Cf., for example, Isaac Moore, S.J., *Series of Lectures on Catholic Socialism*.

³ Thus, in 1848, Proudhon, when questioned by the judges, said in court: "Socialism is every aspiration toward the improvement of society"; and E. de Girardin wrote no differently, but more briefly: "Socialism is civilization." Indeed, in the third part of their very well-known decree, the *Manifesto of the Communist Party*, Marx and Engels distinguish from their own tenets a socialism which contends that the path must be retraced (*reactionary socialism*), and a socialism which wills that the present state be preserved (*conservative and bourgeois socialism*).

⁴ *Le Socialisme contemporain* [Contemporary Socialism], p. XII.

b) Yet *Socialism* properly so called, through its economic tenets, belongs to the genus of positive Communism; and it aims **that whatever is employed for producing or exchanging things be possessed in common by the society of men; and that industries and businesses be administered in common.**⁵⁶

⁵ "Collective appropriation of all the means of production and circulation." Schaeffle, with Vandervelde approving, op. cit., p. 259. "Socialization of the productive forces." B. Malon, *Précis de Socialisme* [Summary of Socialism], chap. 20, at the end.

⁶ "Socialization, not only of the means of production, but of production itself." Vandervelde, op. cit., p. 297.

It is useful to set forth this description precisely in its parts, so that the rationale and intention of socialism may at the same time become better known.

a) Socialism does not contain itself within the bounds of the economic order; and, if you except the agrarian collectivists, I do not know whether anyone besides Dr. Schaeffle professes a merely economic socialism; rather, all who bear a name among true socialists pursue a general renovation of the world. Yet the economic part is a matter of more urgent care to them, because, as we suspect, it is more attractive, and because they profess it to be the more urgent and principal part, which the other religious, political, and domestic reforms must necessarily follow. It was therefore necessary to warn that, in the definition of socialism, we regard only this part, which is sometimes distinguished from socialism,⁷ as a part from the whole, by the special appellation of *Collectivism*. Hence we said: *through its economic tenets*.

⁷ Reformist collectivism, integral socialism.

b) Moreover, this is the generic rationale of *positive communism*: that it wills that either all or many goods which have customarily been possessed by private persons be perpetually assigned to the community; whereas negative communism thinks that among men there still prevails by right that negative community by which things in the beginning belonged to no one and could be converted by anyone to his own good: it would then be lawful to invade another's crops. Therefore, rather than denying dominion over things, positive communism changes the subject of dominion.

Both negative communism and positive communism of an absolute or perfect rationale are now rejected by all, such as was commended, for example, by Plato in his *Republic*; so that a disputation concerning ancient communism can safely be omitted.

c) Collectivists do not agree as to what that society of men *by which things would be possessed in common* would be: for some designate municipalities, others the whole nation, or even some more universal society, but one of a poorly defined rationale.

d) **Whatever is employed for producing or exchanging things.** Think of fields, raw materials (*matière première*), factories, machines, and whatever bears fruit or has a profitable use, yet with the powers and labor proper to the person excepted.

For this division of things, received by economists, is sufficiently well known: some things are consumed by man himself (*objects of consumption*), such as the garment which he wears, the house which he inhabits, a possession for pleasure; others are reserved for producing new fruits or bringing forth new riches (*instruments of production*), such as pastures, houses which are rented, money itself given at interest, or money by which one enters into a share of the profit expected from a business; finally, there are others (if this species is to be distinguished from the one just described) which serve transportation, commerce, and mercantile dealings, such as railways, canals, carriages with horses, banks, etc. (*instruments of transport and exchange*).

Come now, socialists concede private property only over things of the first genus. All the others will belong to the social patrimony.

But what of money itself, which is employed especially in exchanges?

They hope that money will someday be removed from the midst. For it would be sufficient if signs of the labor undertaken by them (*labor vouchers*) were handed to individual citizens, by which they could request useful or pleasant things and take them for themselves from the great publicly ordered depositories.

e) For not only the things themselves, but **the administration of things and every business would be taken away from private persons.** There would now be no place for markets, for the leasing and hiring of things, or for private businesses.⁸

⁸ Schaeffle, *La Quintessence du socialisme* [*The Quintessence of Socialism*], chap. 4.

For individual industries and individual kinds of business there would be appointed individual administrations, which, with all competition abolished, would alone manage the business entrusted to them throughout the whole society to which the instruments and supports of the industries and mercantile dealings belonged, so that each administration would enjoy an absolute monopoly of conducting its affair. Although these administrations would in some manner be subject to the public power, they are nevertheless proclaimed by socialists to be sufficiently autonomous that the abominable tyranny of the State would no longer have to be feared.⁹

⁹ Schaeffle, op. cit., chap. 3; Destrée and Vandervelde, *Le Socialisme en Belgique* [*Socialism in Belgium*], p. 262. Yet the State itself, if the socialists are to be believed, would cease to govern persons, so that it might devote itself solely to administering things. "Transformation of the State into an administration of things." *Déclaration de principes du parti ouvrier belge* [*Declaration of Principles of the Belgian Workers' Party*], art. 1.

The things produced in this manner would be brought into publicly constructed stores, from which the citizens would have to obtain them by means of the vouchers (*labor vouchers*) mentioned shortly before.

An exact computation would be made of the things with which, according to the necessity or will of the citizens, the public stores would have to be furnished, so that the supply of the things which were produced in each kind of industry would be exacted according to a just measure.

From the things produced, the public power would take for itself those portions which would suffice for replenishing the businesses, remunerating the magistrates, and the common utility, so that, besides this form of a tax in kind, no other tax would be imposed.¹⁰

¹⁰ Schaeffle, op. cit., chap. 8; Destrée and Vandervelde, op. cit., p. 301.

To the citizens, moreover, on account of the work furnished, there would return, in the manner of a minimum wage, that by which they could make provision for their necessities. Indeed, they judge this norm of dividing the collected fruits to be preferable in itself: that each person labor according to his powers, but receive according to his necessities. This norm is defended absolutely by those who go by the name of Communists. Socialists, however, acknowledge that it cannot be introduced unless social culture is first perfected and "altruism" is more greatly developed. In the meantime, excepting the minimum wage, they do not refuse to accommodate the fruit to the merit of the work.

And in this manner they hope that they can, no less than today, obtain without coercion that workers not be lacking for any kind of labor.¹¹

¹¹ Destrée and Vandervelde, op. cit., pp. 300–304.

You will perhaps ask for what end that greater wage of more excellent work can be employed by citizens.

They would certainly be prohibited from making a profit from those things which remained to them. Yet it does not appear opposed to the tenets of Socialism that they bestow them upon others by gratuitous liberality, by giving or bequeathing; or reserve them for themselves or their family for a

future time. Let us only remember that these riches do not consist in money, but are represented by vouchers devoid of every intrinsic value.

N.B. Two things remain to be observed. a) This image of future society, which the doctors of socialism themselves deny that they can delineate accurately, will become clearer from the very arguments which we shall oppose to socialism.

b) Socialists indeed do not will suddenly to suppress private businesses, but we have described this ordering toward which they acknowledge that they are striving gradually. Yet cf. below, no. 193.

Therefore, this genuine rationale of socialism differs sufficiently from the common understanding of the doctrine. In vain do the leaders of socialism deny it: most of the proletarians who follow their party envy the goods of the wealthy; the common exercise of industries concerns them little or not at all; but they hope that an equal distribution of all goods will be made among all citizens.

174. Concerning mixed or agrarian socialism. Although, as we shall show, that moderated form of socialism which is called agrarian and which confers upon the treasury dominion only over fields or immovable goods logically calls for a certain absolute communism, these nevertheless appear to us to differ plainly from each other. For they rest upon different rationales; and those who profess agrarian socialism neither will that any industries be exercised in common, nor think of wholly overturning present customs or culture.

But, to reduce these tenets to a brief compass, they judge that there is a special cause why either fields alone, as H. George contends, or even buildings and houses, as others will, cannot be in the just dominion of private persons. These goods, therefore, are to be assigned to the treasury, which could nevertheless permit private persons a sufficiently stable possession, provided that it exacted for itself the rent properly so called (*la rente*), apart from some portion of it to be left to the private persons who would continue to expend care upon goods of this kind. From this the state would further obtain this advantage: that, enriched by this rent, it would abolish every other exaction of tax, which, moreover, they accuse of injustice. Cf. the things which we give more fully below, no. 181, B.

175. Concerning the socialism which is called socialism of the State or of the chair.¹² Although this name, *Socialism of the State*, can be applied to designate those socialists who confer upon the commonwealth possession of things which have a profitable use, it is nevertheless generally reserved for those who expect the economic reformation of society almost solely from the public power, so that they concede an excessively broad authority to laws. Hence this name is also customarily hurled, as a kind of reproach, against all who are accused, rightly or undeservedly, of assigning too great a role to the State in ordering affairs.

¹² State Socialism or Socialism of the Chair.

Since several among these were university professors, especially in Germany, they began to be called socialists of the chair (*Kathedersocialisten*). Thus Roscher,¹³ Conrad, and Schmoller. Some of them now do not greatly shrink from the economic dogmas of socialism. This applies especially to Schaeffle.

¹³ He established an annual convention of men who favor these opinions; this was the origin of the celebrated society *Verein für Sozialpolitik* [Association for Social Policy]. Cf. de Laveleye, *Le Socialisme contemporain* [Contemporary Socialism], p. 324.

176. The scientific rationales of socialism properly so called.

a) For socialism properly so called, to which we confine our discourse in this place, this brief rationale can be supposed: that the evils and vices under which present-day society labors must be met by equality of conditions. For socialists make the greatest progress by accusing the poverty of many and censuring corruptions and “abuses.” At the same time, they rage with an insane pursuit of absolute equality among citizens. It is not enough for them that right under the law be equal for all; rather, they judge every disparity of conditions to be opposed to the equal nature in which men participate. Therefore, since they know that almost every inequality of classes today proceeds from a diversity of fortunes, they will that this be suppressed by taking away from private persons the sources of riches—that is, the occasions of gain and profit.

b) Yet K. Marx¹⁴ especially undertook the scientific demonstration of socialism, and his system,¹⁵ as regards its sum, is approved even today by almost all collectivist writers. Hence we shall give, in a few words, its principal heads, noting the controversies where necessary. They are these:

¹⁴ Yet he himself did not first discover the elements of the demonstration. Cf., for example, the things which B. Malon, op. cit., chap. 15, and D. Van Overbergh, op. cit., hand down. Besides, Rev. Fr. Capart, *La Propriété individuelle et le Collectivisme* [*Individual Property and Collectivism*], part 2, chap. 1, shows that most of the arguments of the socialists are repetitions of those things which, in a preceding age, philosophers, whether pagan or Catholic, had already taught, either seriously or by imagining some commonwealth.

¹⁵ If indeed it is to be called his. Cf. the things which A. Menger has, op. cit., preface to the first edition, where he also teaches that the things written by Marx or Rodbertus are held in a far too high estimation: “I do not hesitate to declare that Marx and Rodbertus, whom people would so willingly set up as the founders of scientific socialism, were greatly inferior to their predecessors in depth and penetration.”

a) **The dialectical process of Hegelian philosophy**, which, however, K. Marx says is to be understood in an inverted manner. For Hegel had posited a *logical* process by which the evolution of the being thought would correspond to thought, or to the evolution of the thinking mind. Marx, by contrast, introduced an *ontological* process by which ideal evolution would be accommodated to real evolution.¹⁶ But that process or motion is constituted by three moments contrary to each other, so that through a twofold contrariety one arrives at a certain composition or concord. Thus, the *thesis*, or affirmation, which is first, is followed by the *antithesis*, or negation; this in turn, by negating itself, arrives at the *synthesis*. From this Marx was able to foretell future destinies and the necessary advent of collectivism. For in the beginning there was the community of all things as the thesis. The private property of all things followed as the antithesis. The synthesis will be the community of things which are destined for profit and the private property of sterile things. Or, if you prefer: in the beginning the artisan exercised his craft privately and gathered its fruit (thesis). Now, in great factories, the production of things is done in common, but not the distribution of the fruits (antithesis).¹⁷ It remains that the appropriation of the fruits should, in the synthesis, assume a social rationale.

¹⁶ By which, as Engels used to say, the Hegelian dialectic was again “set upon its feet from its head.”

¹⁷ “The opposition between ... the private character of the manner of appropriation and the social character of the manner of production.” Bernstein, op. cit., p. 14.

β) **Historical materialism.**¹⁸ From the time things began to be possessed privately, the whole connection and series of history is explained and contained by a perpetual law which wills that all other things be subject to the economic constitution of society: religion, morals, right, and

convictions are, as it were, “epiphenomena” upon the economic phenomenon,¹⁹ superconstructed by those who hold primacy in society.²⁰ Thus the doctrine can be set forth; from it this follows: that, once the economic ordering is changed, neither religion nor former morals could persist.

¹⁸ With reason, Bernstein, op. cit., p. 13, would prefer the expression *Oekonomische Geschichtsauffassung* [*Economic Conception of History*].

¹⁹ An expression of Enrico Ferri.

²⁰ The dominant class.

γ) The struggle of classes among themselves:²¹ this produces the economic changes themselves.

²¹ Class struggle.

δ) The theory of value,²² which places the whole cause of value in labor. This furnishes the rationale why the various classes necessarily conflict with each other in war. And indeed, if labor alone produces value, those who possess the instruments for producing or exchanging things grow rich only from the labor of another, insofar as they take for themselves a part of the value which of itself belongs to the workers. But this is within their power because, on the one hand, on account of the monopoly of their possessions, they can exact from the workers whatever morally remains beyond the necessary sustenance of these workers (of their own person and family); and, on the other hand, a few hours suffice for the worker’s labor to produce a value congruent with daily sustenance. Therefore, whatever he produces throughout the remainder of the day is taken from him by those who possess the instruments of industry (capitalists). And the more the productivity of labor is increased by new inventions, the more this rationale of spoliation becomes oppressive. The industries which are exercised in such a way that those who possess the instruments are devourers of another’s labor also increase in number daily. From this it occurs that ever more frequent spoliations excite greater envy and sharpen the furies of a war which cannot be quieted until, with collectivism introduced, the very distinction of classes has been removed from the midst.

²² Even in describing this theory, K. Marx appears to have imitated the socialists of England, whom, however, he omitted to mention. Thus Menger, op. cit., in the preface and chap. 9: “The whole theory of surplus value is borrowed in substance from the works of Thompson.... Marx himself, like Rodbertus, passed over the sources of his theories in silence, although he is often sufficiently prodigal with citations.”

N.B. 1. With this doctrine there coheres a new signification of certain words among socialists. For today they judge that the classes of citizens are to be distinguished chiefly from the possessed instruments and supports of industry or mercantile activity.

They call those who have nothing *proletarians*;²³ those with money (*bourgeois capitalists*) who, by leasing those instruments, make a profit from the labor of others; those of the middle class, who apply their own instruments to their own industry; and *capital* whatever bears fruit by the labor of others.²⁴ By the French words *révolution* and *révolutionnaire* they sometimes designate a violent overturning of affairs, and sometimes a new order of society even when it appears that it will be introduced peacefully.²⁵

²³ If you press this rationale, as Leroy-Beaulieu rightly observes, you will also have among the proletarians those who, for example, on account of the management of a business, have very ample annual salaries.

²⁴ “Capital, that is, property which exploits wage labor.” *Manifesto of the Communist Party*, II, p. 18.

²⁵ Cf. *Musée Social*, 1900, pp. 16, 21, 29.

2. While K. Marx sees only one outcome of affairs, B. Malon and others judge that the same affairs can end in various ways, and they ascribe a greater authority to reason and mind in historical destinies. Hence, certainly in some manner, they are, and profess themselves to be, adversaries of historical materialism.²⁶

²⁶ Cf. B. Malon, *Précis de Socialisme* [Summary of Socialism], chap. 15.

They also dissent from K. Marx in this other matter: he judges that the human race is now at the point that, once the stage has been traversed, it can remain perpetually in the happiness of collectivism, while others promise no rest to the traveler.²⁷

²⁷ B. Malon, op. cit., chap. 23, p. 225; Bernstein, op. cit., p. 5.

177. The remaining tenets of the socialists. Having set forth the economic rationale of socialism, it is useful to indicate briefly which things, in other genera, commonly please all who lead the ranks of the socialists.

a) They profess atheism, and in place of divine worship they substitute some sort of religion of humanity.²⁸

²⁸ "For the religious sense properly so called, it [socialism] substitutes the social sense; for the worship of an abstract entity, the worship of humanity." B. Malon, *Précis de Socialisme* [Summary of Socialism], chap. 19.

b) They say that men by their nature are so inclined to good that all evils are to be attributed to the fault of institutions.

"There are no supreme saviors: neither God, nor Caesar, nor tribune." Thus in the song *L'Internationale*, with which they brought to an end the Parisian congress held on December 3–8, 1899, to reconcile among themselves the various parties of socialism in France.

c) They deny a spiritual soul and free will, and subject society to a fatal evolution.

d) They repudiate indissoluble marriage; and they commend a union which rests upon love alone. For they obstinately deny that the conjugal contract is more sacred than other contracts.

e) They reduce the essential functions of public authority to the economic administration of things. In a socialist regime, as they boast, persons will no longer be governed.

178. Species of socialists. From the things said above, it becomes sufficiently manifest in what various manner a distinction can be made among socialists.

a) **From the genus of socialism**, some profess pure socialism, others mixed or agrarian socialism, which can be called Anglo-American from the regions where, on account of evil practices exercised in acquiring or administering lands or in expelling tenants, it began especially to gain strength.

b) **From the subject of collective dominion**, the communist-anarchists of France attribute possessions to municipalities which would enjoy perfect autonomy; others assign things to the State; others to a more universal society of men circumscribed by no boundaries.

c) **From the means which they choose**, some, scorning legal and political methods, will to prevail by force alone and are practical anarchists; others rather hope that they will attain supremacy by means of popular suffrage. And these more properly retain the name of socialists,²⁹ although, when an occasion is given, they would not refuse to act even by force; and they are averse to individual

homicides or crimes rather than to mobs.³⁰ Among these latter, some, as though impatient of delay, oppose remedies which might alleviate the evils of the people, since from the bitterness of sufferings they expect the more proximate triumph of the cause; or, if they repudiate these enormities, they at least regard those remedies and alleviations and various reforms as secondary and incidental matters. Thus the pure Marxists. Others, by contrast, do not disdain benefits, and cooperate with laws and decrees which change the condition of the people for the better. Of this position are the “possibilists,” who are wholly occupied with obtaining those reforms which are actually available; and through slow advances they tend toward a new order. Thus many in France; in Germany, for example, Messrs. Vollmar and Bernstein; and not a few in Belgium.

²⁹ From this it is understood why, already from the London congress onward, in order to separate their cause from the anarchists, they place the use of political means among the essential principles of socialism. Recently, those who convened the Parisian assembly of 1899 also rendered the same principles in these words: “International agreement and action of the workers; political and economic organization of the proletariat into a class party for the conquest of power and the socialization of the means of production and exchange.”

³⁰ “Let us know how to be revolutionaries when circumstances require it, but let us always be reformists.” B. Malon, *Précis de Socialisme* [Summary of Socialism], chap. 18.

179. Historical notions. We would certainly stray too far from our argument if we wished to pursue accurately the historical fortunes of socialism; yet it will help not a little to keep before our eyes: 1) what were the seeds and genesis of the doctrine itself; 2) what were the beginnings of the present-day party; 3) what attempts were made to introduce socialism in practice.

I. CONCERNING THE GENESIS OF THE DOCTRINE

A. The doctrine of present-day socialism was prefigured:

a) **By certain works of the ancient philosophers.** Mention must be made first of Plato’s dialogues *De Republica* [On the Republic] and *Critias*, where, in the perfect state which is imagined, with slaves and the common people devoted to vulgar arts omitted, the nobles, who govern the state by prudence and defend it by arms, have goods, women, and children in common.

b) **By works of fiction which depict a delightful image of a perfectly common life.** Here there must be mentioned: in the sixteenth century, the work *De nova insula Utopia* [On the New Island of Utopia], written by Blessed Thomas More,³¹ which served as an example for several writings and furnished socialists with not a few rationales for attacking private possessions; in the seventeenth century, *Civitas solis vel de Reipublicae idea dialogus politicus* [The City of the Sun, or a Political Dialogue on the Idea of a Commonwealth], composed by Campanella, an ex-Dominican; in the eighteenth century, *La Basiliade*, a poem by the French pedagogue named Morelly; and, in England, *Spensonia*, a work of fiction by an English teacher named Spence, who was especially opposed to the property of lands; in the nineteenth century, *Le Voyage en Icarie* [The Voyage to Icaria], which Cabet composed. Recently, in 1890, a similar work of fiction, *Looking Backward*, whose author is Bellamy, also appeared in America.

³¹ He had it in mind to mingle useful counsels with fictions.

c) **By works of philosophers of the eighteenth century**, who, like Rousseau,³² attacked private dominion; or, like Diderot,³³ celebrated the delights of free love; or, like Morelly,³⁴ derived all the vices of man from present-day culture and delineated a new order constituted in communism, whence more recent communists borrowed many things. Montesquieu himself, the very well-known

writer of the work *L'Esprit des lois* [*The Spirit of the Laws*], does not appear to be one who should be omitted. The philosophy of the rationalists of Germany, and especially Neo-Hegelian philosophy, prepared the way for the scientific exposition of socialism.

³² Cf. *Discours sur l'origine de l'inégalité* [*Discourse on the Origin of Inequality*], part 2; *Sur l'économie politique* [*On Political Economy*], etc.

³³ *Supplément au voyage de Bougainville* [*Supplement to the Voyage of Bougainville*].

³⁴ *Code de la nature* [*Code of Nature*].

d) Indeed, rightly and deservedly, there can be placed among the parents of socialism several pseudo-reformers of the sixteenth century and all who afterward fought against the Church of Christ and the moral and civil institutions to which it had given origin.³⁵

³⁵ Cf. the encyclical *Quod Apostolici*, December 28, 1878, at the beginning.

The dogmas of socialism were also adumbrated:

e) **By the writings of several men who in this century were in various manners opposed to private property and Christian morals**, so that they might praise communism, collectivism, or anarchism. The chief ones are de Saint-Simon and his disciples; R. Owen, L. Blanc, Proudhon, P. Leroux, and de Colins.

f) **By books of liberal economists**. Thus the system of H. George rests upon the doctrine of Ricardo; and before Marx employed this foundation, Adam Smith, Bastiat, and several others judged that the source of value was placed in labor alone.

B. The principal doctors of present-day socialism are numbered as K. Marx and F. Engels, who, when asked by the London congress of 1847, published in 1848 the pamphlet *Manifeste du Parti communiste* [*Manifesto of the Communist Party*], which socialists still use today as a kind of authentic decree, although, long neglected, it began to have celebrity only after the year 1871. Yet K. Marx occupies the first place.³⁶ In his book *Das Kapital* [*Capital*], he expressed the proper form of scientific socialism. To him add Bebel, who sketched what the commonwealth of the socialists would be like in the depraved work *Die Frau* [*Woman*]; Liebknecht, who writes the newspaper *Vorwärts* [*Forward*]. In France, the works of B. Malon are especially known: *Précis de Socialisme* [*Summary of Socialism*], *Le Socialisme intégral* [*Integral Socialism*]. He founded *La Revue Socialiste* [*The Socialist Review*].

³⁶ Yet by what right, cf. above, p. 193, note 3.

2. CONCERNING THE PARTY

In Germany, socialism had Lasalle as its principal apostle, who was celebrated as though another Messiah. He, whose counsels appear to have been peaceful, placed very great hope in associations of proletarians which, with the commonwealth assisting, would exercise industries and break the power of the moneyed; moreover, he founded groups of socialists which were proper to Germany, while K. Marx, from whom proceeded the sect called *L'Internationale* [*The International*], had rather striven to unite the proletarians of various nations by friendship and compact. Nor did the two agree entirely concerning principles. Thus, for example, the famous invention of Lasalle, the iron law of wages, was by no means consonant with the tenets of K. Marx. But at the Gotha congress in 1875, the German socialists commonly adhered to the doctrine of Marx, so that the origin of the German party can be

traced from that point. Besides the pure Marxists and the Younger Socialists, who, with Werner, Auerbach, etc. as leaders, are more impatient of delay and object to excessive “parliamentarism” among the Marxists, there are others who incline in soul toward the more moderate parties. In this number are von Vollmar and Bernstein, whom Kautsky opposes.

The French party was founded in 1880 and constituted D. I. Guesde as its first head. Thereafter it was divided into several parties, which, at the Parisian congress held from December 3 to 8, 1899,³⁷ agreed upon concord among themselves.

³⁷ Cf. *Musée Social*, January 1900.

In Belgium, the beginning of the party was a convention of workers which was held at Brussels on April 5, 1885. There, with Volders as author, they took the name of the workers’ party (*Parti ouvrier*)³⁸ rather than that of the socialists.

³⁸ Vandervelde and Destrée, *Le Socialisme en Belgique* [*Socialism in Belgium*], p. 11.

The principal conventions. Omitting those which are proper to a particular nation, the principal councils, after the society whose name was the International was dissolved (1877), were those of Ghent, 1877; Paris, 1889; London, 1896.

3. EXPERIMENTS OF A REGIME COMMON IN SOME MANNER. Since socialists themselves not rarely dare to appeal to certain experiments in communism which either formerly were attempted with a design wholly different from their own, or more recently were attempted even by certain supporters of collectivism, it appears worthwhile that we should explain briefly what is to be thought concerning this matter.

Come now, those experiments can be reduced to three forms.

The *first*, which is little certain and defined,³⁹ pertains to certain ancient states, namely, those of the Cretans and Laconians, where, with the multitude of slaves or of those who were devoted to the lower arts disregarded, the citizens properly so called—or that principal order which at its own judgment conducted all things at home and in war—was led by similar pursuits, a certain love of country, and the very necessity of defending it, to live in sufficiently close union and to enter upon a certain community of sustenance.⁴⁰

³⁹ Cf. Pöhlmann, *op. cit.*, p. 6.

⁴⁰ Pöhlmann, who, *op. cit.*, is especially to be consulted concerning these matters, assigns a military and political cause to the common meals, *syssitia* (συσσιτίαι). See p. 65.

The *second form* rests upon a religious foundation, manifests a great severity of life, and wholly trusts in the authority of a few.

Thus not a few faithful of the Church of Jerusalem, devoted to voluntary poverty, began to bring their fortunes into a common stock. Thus also the sects of the Albigensians and the Anabaptists, which were hostile to private possessions, gave origin in 1527 to the Moravian Brethren (*Frères Moraves*), who for some time had goods in common, until, after six or seven years, their affairs began to fall apart when dissensions arose.⁴¹ The colonists to whom, from the region which they occupy, the name Herrnhuters was given have persisted longer in a sufficiently perfect equality. They arose from the Bohemian Brethren, who are an offshoot of the Hussites. They profess strict dependence upon the authority of the elders; and although they do not exclude private possessions, by the strict manner of

life and the religious foundation upon which they rest, they rather imitate the religious institutes of the Catholic Church.⁴²

⁴¹ Cf. Thonissen, *Le Socialisme dans le passé* [*Socialism in the Past*], chap. 6, §3.

⁴² Cf. *ibid.*, chap. 3, §3.

The Paraguayan barbarians passed happy years under the Missionaries of the Society of Jesus. Yet they professed no communism strictly so called, nor could institutions of this kind be consonant with cultivated peoples.⁴³

⁴³ Cf. *Stimmen aus Maria-Laach* [*Voices from Maria Laach*], XXV, 445.

Everyone sees how little these two rationales agree with the dreams of the socialists, from whom every humility and abnegation are absent.

Finally, the *third form* flows from an intention which is more temporal and economic.

Here there must be mentioned the “cooperative” colonies attempted in vain by R. Owen in this century: first in Scotland,⁴⁴ where affairs proceeded very prosperously for some time, then in America and England; and, in France, the National Workshops of L. Blanc, which ended most miserably.⁴⁵ The communistic societies of Australia which have recently been celebrated (*communist villages*) are rather a genus of “cooperation” and furnish arguments against communism.⁴⁶ But the decrees by which they willed to flatter the workers’ party (*Labour Party*) came to this: that, although the land is most generous, the undertaking of great businesses ceased, and not a few of the workers were already compelled by poverty to leave that region and go to another where the impediments of the laws were less.⁴⁷

⁴⁴ Cf. Thonissen, *Le Socialisme et ses promesses* [*Socialism and Its Promises*], chap. 3, §1.

⁴⁵ Concerning these, consult Pierre de la Gorce, *Histoire de la 2^e République* [*History of the Second Republic*], vol. 1, bk. 6.

⁴⁶ Cf. *Musée Social*, March 1900, pp. 75, 77, 79, 85, 91.

⁴⁷ Cf. the *Daily Mail*, September 19, 1903, and the *Pall Mall Gazette*, September 23.

The several attempts made in America proceeded no more happily, so that Rev. Fr. Cathrein could write that, among perhaps a hundred communistic experiments which can be enumerated in this century, there was none which had a desirable outcome. Cf., besides, *Stimmen aus Maria-Laach* [*Voices from Maria Laach*], vol. 49, p. 284 ff.; vol. 52, p. 347; vol. 53, p. 338.

Article II. Formulation and Arguments of the Conclusion

THESIS XII

Collectivism, whether pure or mixed, coheres with false rationales and judgments, and no less is to be wholly rejected in itself.

180. I. The state of the question. 1. THE MANIFEST INTENTION OF THE THESIS is opposed to the economic tenets of present-day socialism. In this refutation, this must be observed concerning the method itself: it is by no means necessary for us to defend against the socialists the present form of the economic order, as though it were to remain forever and were absolute and perfect in every respect. For there appears no rationale why the progress of the human race should remain here rather

than under servile domination, a feudal aristocracy, or privileged guilds of workers; nor are there lacking, even among Catholics, those who, no less than the socialists, rebuke in the gravest words the vices and abuses of the regime which we employ.¹ But we repudiate socialism for this cause: that it attacks and thinks of overturning institutions which, both after the birth of Christ and before Christ, were common to every cultivated nation; and thus it reveals itself as hostile to the very nature of men as it exists “in the concrete.”

¹ Cf., for example, the work of Rev. D. Fr. Hitze, written in 1880, which D. Weyrich recently, in 1898, rendered into French under this title: *Capital et Travail* [*Capital and Labor*].

2. THE TERMS ARE EXPLAINED.

Collectivism, that is, present-day socialism insofar as it regards the economic order.

Whether pure, whose precise dogma is this: that whatever is employed for producing or exchanging things be possessed in common, and that every rationale of industry or mercantile activity be ordered in common (*production and exchange*);

Or mixed, which is circumscribed to immovable things, especially lands;

Coheres with false rationales, so that it already collapses from the vanity of its foundation;

And judgments: we call judgments those positions which are approved by socialists, although they less directly or necessarily make arguments for them.

And no less in itself, so that we may touch upon and refute these errors not only in their rationales but also in themselves;

Is to be wholly rejected. Wholly, I say, insofar as it is opposed not only to present or soon impending times, but to all times, with attention to human nature as it exists after original sin; wholly also insofar as, even with impiety removed and reduced to a merely economic system such as is exhibited by Dr. Schaeffle, it cannot be admitted; wholly, finally, that is, not only in part but in its entirety, insofar as it is neither a form which you can introduce nor an exemplar which must certainly be approached.

NOTE TO THE THESIS. There is no reason for us to speak concerning the formal contrariety which the foundations of pure socialism have toward every religion. “So great,” Leo XIII wrote,² “is the disagreement between their depraved dogmas and the most pure doctrine of Christ that none greater exists.” In the encyclical *Rerum Novarum*, he strikes their very opinion concerning war among the various classes with these words, which are certainly most grave: “In the matter of which we speak, it is a capital evil to imagine in opinion that one class is of its own accord hostile to the other, as though nature had prepared the rich and the proletarians to fight among themselves in a stubborn duel.”

² Encyclical letter *Quod Apostolici*, December 28, 1878.

As regards the strictly economic tenets of absolute collectivism, they appear to deserve the note of temerity. For that note³ appears plainly to agree with this judgment of the Supreme Pontiff: “From all these things it is evident that the tenet of socialism concerning reducing possessions into common ownership ought to be entirely repudiated, because it harms the very persons who must be aided; it

is opposed to the natural rights of individuals; it disturbs the duties of the commonwealth and the common tranquility.”⁴

³ “A proposition is temerarious when it is opposed to theological doctrine so certain that it is not lawful to deny it.” C. Mazzella, *De virtutibus infusis* [*On the Infused Virtues*], no. 534.

⁴ Encyclical *Rerum Novarum*.

3. Nor is moderated or agrarian socialism to be branded with a better name. For in the same Encyclical, the Supreme Pontiff expressly teaches that the right by which lands are possessed by private persons as owners is upright. This is so true that H. George himself attempted to resolve the arguments of the Supreme Pontiff.⁵ Indeed, since this form of socialism accuses the owners of lands of formal injustice, it could appear to be struck indirectly by the condemnation of the Apostolics (of the second century after the birth of Christ) and of Wycliffe. St. Augustine places the sect of the former among the heretics,⁶ because they thought that those who possess their own things have no hope of salvation. Among the articles of John Wycliffe condemned at the Council of Constance, the tenth and thirty-sixth made clerics who had possessions guilty of sin and heresy.⁷ Now it is evident that the things over which the Apostolics denied property to private persons were then chiefly lands; and it is no less manifest that the possession of lands, which is not opposed to clerics, is even less forbidden to laymen. Nevertheless, since present-day opponents of possessions do not wholly exclude lands from private dominion, but merely will that the rent strictly so called pass to the State, we judge that the former condemnations can be evaded by them.

⁵ In the epistle to the Supreme Pontiff.

⁶ *De haeresibus* [*On Heresies*], bk. 1, heresy 40; Migne, vol. 42, col. 32. The Waldensians appear to have professed a similar error.

⁷ Some also appeal to the articles concerning which Martin V willed that all who were suspected of the errors of Huss and Wycliffe be questioned; but, as Rev. Fr. Billot, S.J., *De Ecclesia Christi* [*On the Church of Christ*], vol. 2, p. 113, observes, the law and norm of belief cannot be sought from them.

At the same time, it must be noted in this place that only those are numbered among agrarian socialists who teach that lands, by their nature, belong to the community. For a state, especially one which now has its beginnings, can be situated in circumstances of such a kind that it appears to be in the public interest to establish, by means of rent received from lands, some rationale of fiscal dominion. Nor would someone be infected by the stain of socialism for contending that this form of tax, by which the public power claims for itself the whole rent strictly so called, is of itself to be commended everywhere. The matter then returns to the question concerning justice to be observed in taxes and their upright distribution.

II. PROOF

181. The First Part is proved. Collectivism, whether pure or mixed, coheres with false rationales and judgments.

A. CONCERNING PURE COLLECTIVISM.

For not only historically, or “*de facto*,” are the things which the principal doctors of collectivism bring forward to demonstrate or confirm their system mendacious and false and full of error; but also, what is more, it cannot logically be defended without the support of arguments of this kind.

1. Concerning the historical conjunction by which many false things are connected with collectivism.

Materialism is false; an evolutionism such that the natural inclinations themselves could be cast away by the greater part of the human race is false: these things are evident from elsewhere.

The historical materialism of K. Marx is false. For *a priori*, if men entered society on account of their necessities, and these are not only of the economic and material order, it is already sufficiently apparent that it cannot occur that the historical process be resolved ultimately into economic causes. But *a posteriori* there are six hundred examples which overturn this thesis. What economic rationale can be placed beneath the beginnings of Christianity, which rests chiefly upon the fact of the Resurrection of Christ, or beneath the propagation of Mohammedanism itself, or beneath the expeditions for liberating the Holy Land? What economic element was there in the recovery of the code of Roman law, in the renewal of the arts and letters (*Renaissance*), in the pseudo-Reformation of the sixteenth century—things which were of the greatest moment for the historical fortunes of all Europe, or rather of the whole world?⁸ What of the fact that the fortune, religion, and culture of some nation are often profoundly changed by the character, genius, virtue, or vice of a single man? Recall to mind Alexander the Great, Gustav Vasa, Napoleon, Bismarck, etc.

⁸ B. Malon himself opposes many facts to this doctrine in *Précis de Socialisme* [*Summary of Socialism*], chap. 14.

Nor is it sufficient, in order to weaken the force of this argument, to show some agreement between Christian doctrine and the temporal conditions of society, or to prove that several of those who gave their names to the sacred expeditions were moved by an end of the economic order. It by no means follows from this that the doctrine itself or the expeditions themselves can be attributed to economic causes. For how often are many who devote their labor to some work, or embrace certain parties, driven by private desires and by various and diverse pursuits which are utterly remote from the end of the work itself or from the intention of those who constituted the parties; yet the work or the parties do not derive their nature from these pursuits. Thus, for example, it cannot be denied that perhaps quite many are moved by the hope of monetary gain to give their names to Catholic or liberal parties. Yet who would seriously think that a question of the economic order is at issue here, and that the two parties are contending with one another over the management of household property?

Nor can this principal point be passed over: the socialists accomplish little by having detected some economic rationales in almost every matter. Because of the composite nature which we have, and the importance which bodily advantages possess among most men, we could have suspected this and need not be surprised at it; but from this they by no means prove that all things in society are positively adapted to the economic part and are subject to it.

Unless they establish this, their historical materialism lacks all firmness.

The struggle among the orders, as expounded by K. Marx, is false. He regards it as the universal means by which, when harmony between positive institutions and the economic order has ceased, the human race necessarily arrives at a new stage of its evolution. And in truth, by the intention of nature, conditions and fortunes vary precisely so that some may bring mutual aid to others rather than contend with one another in a hostile spirit;⁹ while the most manifest documents of history demonstrate that peoples have been led to another practice and culture of life far more by wars with foreign nations than by civil dissension. Thus, after wars, the barbarians laid aside their rustic

manners; thus conquered Greece brought her refinement into rustic Latium. Among several peoples of the East, not even a trace of a struggle of this kind is found. And, to return to ourselves, what have the various arts that have been devised—for example, printing—not been able to accomplish in our manners? Yet how foreign the struggle among the orders was to these inventions! Add that, in order for the reasoning of K. Marx and Engels to hold, it was necessary that the poverty of the proletarians increase from day to day, so that, at fixed intervals, after every tenth year,¹⁰ crises and disturbances would break out, hastening the end of the present order. But the socialists themselves are compelled to admit that, from about the middle of the nineteenth century, the condition of the workers has changed for the better;¹¹ and that the number of those who possessed a share of the soil has increased, far from all riches having come into the hands of a few.¹²

⁹ Cf. the Encyclical *Quod Apostolici*, at the beginning; and the Encyclical *Rerum Novarum*, in the first part.

¹⁰ According to the conjecture of K. Marx.

¹¹ Cf. Cathrein, *Der Socialismus* [Socialism], chap. 2, art. 2, §§3 and 4, p. 107 ff.

¹² “The sharpening of social relations has not taken place in the manner depicted by the *Manifesto*.... The number of possessors has become not smaller, but greater.... The middle strata alter their character, but they do not disappear from the social ladder.” Thus Bernstein himself, *Die Voraussetzungen des Sozialismus* [The Premises of Socialism], Preface, p. vi.

The conclusion by which all evils and crimes are attributed to institutions is false and, moreover, plainly gratuitous: since the seeds of vices sufficiently disclose themselves in our very character, and men of the most diverse morals have employed the same institutions. Indeed, if there was some necessity of constituting the state otherwise, the blame must for the most part be assigned to the men who, by their corrupt morals, vitiated the regime. Recall the fortunes of the Roman republic. Moreover, men themselves existed before civil institutions. If they had been perfect, it is not apparent how they would have given origin to perverse institutions. How much more truly, therefore, Aristotle already wrote in his own time¹³ that property was not to be accused of quarrels and various evils, but wickedness was.

¹³ *Politics*, bk. 2, chap. 3.

The equality of rights and duties is false, since nature has not only brought it about that men are of the same species, but has established in individuals the most diverse conditions of ability, birth, and place, so that from birth itself many already differ among themselves. Cf. the Encyclical Quod Apostolici, in the first part.

The theory of value which Marx places as the first foundation is false. Cf. below, the thesis on value and price.

The rationale by which they proclaim marriage similar to any contract, rescindable by the consent of the contracting parties themselves, and will that offspring be taken away from the providence of their parents, is false and no less contrary to religion than to nature. This is manifest from other disciplines.

2. Concerning the logical conjunction of falsehoods with collectivism. It will be sufficient to take these examples.

Once materialism has been repudiated, the very historical process by which all phenomena are traced back proximately or ultimately to an economic cause collapses. But when that process has been denied, the future order which the socialists celebrate is shown to be a vain dream.

He who denies an all-encompassing evolution must admit that collectivism will never be introduced, at least for a notable time, since it is too manifestly opposed to human nature as it now exists.

Unless the socialists posit the various orders of citizens as contending with one another in a stubborn duel, what peace, what happiness can they promise us from the suppression of the distinction of orders?

Unless they place complete trust in the innate and perfect goodness of men, they cannot announce that, from changed institutions, concord and a most happy agreement among men will come to be.

If you render vain K. Marx's doctrine of value, the rationale which he devised concerning capital and "capitalistic" property is already overthrown from its foundations. Nor does he now have an antithesis from which he can dialectically infer a synthesis (cf. 176, b, a).

The perfect equality of men which the socialists defend could not stand if they permitted the husband and the father their proper authority, and tolerated citizens' being distinguished in ability, pursuits, and convictions through the private education of children. But, in order to obtrude their dogmas, they would have to descend to every extreme measure.

B. CONCERNING MIXED OR AGRARIAN COLLECTIVISM.

1) It rests upon a false economic rationale, an adulterated or at least imperfect notion of rent which was invented by Ricardo.

Rent strictly so called (*rente*) does not mean among economists the whole annual payment which a tenant farmer is accustomed to pay to the owner (*fermage*), but that part by which some special excellence of the land, which is to be attributed to nature or at least proceeds from no industry of the owner, is repaid.

To make this matter evident, consider that one who intends to sell or lease for a price an estate upon which he has spent labor in clearing and preparing it will strive first of all to stipulate for himself a suitable return, both for the house and buildings which he may have erected and for the monies or expenditures which he has spent to adapt the soil or change it for the better; nor will such a price of itself be denied to him. These things, however, pertain only to rent in the broad sense; but if the owner can establish anything further for himself, that contains the rationale of rent properly so called.

Come now, in order that we may inquire into the causes of rent of this kind, no one is ignorant that the more estates excel others, the greater the advantages they bring to the tenant farmer and the greater the price for which they can be leased.

If, therefore, this excellence has not been produced by labor but proceeds from native goodness itself—from fertility, for example, by which estates produce fruits that are either better or cost less for the cultivators—it will bring an increase in the price of leasing which accrues gratuitously to the owner. He will therefore receive rent strictly so called. It is very well known how greatly vineyards thus differ from one another in annual yield; nor is the matter otherwise regarding grain or other produce.

Again, anyone can readily see that this advantage can come to lands not only from fertility but also from location: thus fields which adjoin cities are valued more highly than those which are far distant.

Finally, neither can this be doubted, that this cause is not proper to agriculture. For more productive mines, locations which are more advantageous for conducting business, and even houses which, because of the site upon which they are placed, are to be preferred to others, customarily bear rent of this kind in our regions. But, what is more, in every art and in every matter, if someone by ingenuity or chance discovers a method of saving expenditures which of itself or by a legal privilege is inaccessible to others, will he not obtain an emolument which is plainly similar to rent, so that the sole difference appears to be that the privilege of the soil is more permanent?

Thus far, these are the things which appear capable of being established concerning a difficult and disputed matter. But Ricardo, a celebrated expert in economics, devised this doctrine concerning rent of this kind, which, although it is still accepted by many, nevertheless suffers from more than one defect. For he contends that men, after they begin to have a fixed abode, first devote their labor only to those lands which are of the greatest fertility. There is then no place for rent. But gradually, because of the increase of the multitude, it becomes necessary that more abundant produce be procured either by cultivating land of a somewhat inferior quality, then of the third class, then the fourth, the fifth, and so on, or by making greater expenditures, with the result that the produce must be sold at a higher price. By this rationale, therefore, rent first arises for those who possess the best lands, then also for others who cultivate less generous fields, etc., so that these things can be established universally:

- a) The origin of rent is explained by the greater dearth of grain;
- b) The amount of rent is to be measured by the fertility by which, among cultivated lands, the others surpass those which are of the lowest quality;¹⁴

¹⁴ D. Hervé-Bazin gives a sufficiently similar rule when he says (*Traité élémentaire d'économie politique* [Elementary Treatise on Political Economy], part 4, chap. 5, p. 477, 3rd ed.): "Rent is equal to the difference between the profit yielded by the cultivation of a piece of land and that yielded by the cultivation of the worst land under cultivation." He himself, however, together with those who think correctly, holds that this excellence is to be estimated not from fertility alone but also from location.

- c) As the multitude of men increases, grain necessarily becomes dearer, and consequently additions are made to rent itself.

But all these things are only partly true and are stated too absolutely. For:

- a) That order by which one proceeds from cultivating the best lands to less good lands and thence all the way to worse ones is fictitious, since, besides fertility, not a few other things must be considered in choosing lands, and a scientific exploration of lands was not customarily made in those beginnings. But if, with certain more recent authors, you remain silent concerning that order, you will indeed escape that first defect; yet the other criticisms which must immediately be added are by no means answered. This point remains in particular: the case of lands is not subject to a special rule. It is a perpetual principle that things do not acquire a price unless scarcity is added to their utility. Therefore, the rarer good things are, the more valuable they will be of themselves; but at the same time it is apparent that increments of value are also received from increased utility or goodness.
- b) Consideration appears to be had for fertility alone, while rent can also arise from location. The formula which we placed second is therefore imperfect.

c) However rent strictly so called may stand, the price of leasing can also be increased because of the improving art of cultivating lands. For although grain remains at the same price or even becomes cheaper, nevertheless a greater profit will return to the cultivator if he obtains a more prosperous crop or obtains it at less expense. The interests of those who possess lands are therefore by no means contrary to the improvement of lands.¹⁵ Again, Ricardo appears to have neglected this.

¹⁵ Cf. V. Brants, *La lutte pour le pain quotidien* [*The Struggle for Daily Bread*], no. 78.

d) For this reason, and also because of produce which can be brought in from other regions, the rule which was set down on p. 211 under letter c) is defective. Indeed, one may argue from the facts themselves. Did we not, a few years ago, see the income of estates decrease greatly in Belgium, where the population is most dense? Moreover, even if those incomes have increased, because of the ever greater expenditures employed in working the lands, rent properly so called (the gratuitous rent) is reduced almost to nothing.

Ricardo is deceived even more when he wholly neglects the rent which attaches to other possessions and treats the question of the rent of lands alone.

Yet mixed collectivism, at least as proposed by H. George, rests upon this defective doctrine.

From this he produces ill will toward the possessors of lands, as though they were hostile to a more perfect agriculture and to the arts which provide men with an easier sustenance.

From this, because he thought that continual additions were made to rent, he judged that the possession of lands causes citizens to be separated by fortunes that are too unequal; whereas, in our regions at least, the greatest gains have been received from other arts and businesses.

From this, because he regarded rent as something proper to lands, he began to assail these possessions alone.

2) Besides this error, the cause of which he can lay upon Ricardo, H. George does not escape another, by which:

He falsely appears to attribute the increment of rent which the owner of land obtains from the enlargement of cities or similar causes to the formal action of society as such, while it is due rather to the action of private persons; and he no less falsely thinks that it will profit society only when it has come into the hands of the State (cf. difficulties B. 1. b.). But, as we shall see, private possessions have their own public utility.¹⁶ Indeed, so many persons can exist among whom land is distributed that by far the greatest part of fathers of families enjoys the advantages of possession of this kind.¹⁷ Thus, about fifteen years ago, in France, out of 7,600,000 fathers of families, 5,550,000 possessed some portion of soil; while in Belgium, out of 1,100,000, 900,000 did so.

¹⁶ Cf. the Encyclical *Rerum Novarum*. Rev. Fr. Holaind, op. cit., adduces this passage from Roscher (*Econ. polit.*, bk. 1, §87): "The progress of civilization demands a perfect stability and a more general creation of landed properties, in the interest of those who participate in this progress and even of those who do not possess land."

¹⁷ Hence some, such as D. Van Overbergh, greatly favor laws which prevent large patrimonies from remaining undivided for a long time. Others, such as D. Brants (op. cit., nos. 79, 84 ff.), are less opposed even to extensive estates, but they inculcate the beneficent patronage of the wealthy.

3) Finally, he falsely denies that anything beyond the fruits of labor is legitimately possessed by private persons. Cf. the thesis on property.

182. The Second Part is proved. Each form of collectivism is no less to be wholly rejected in itself.

A. CONCERNING PURE COLLECTIVISM. Whether you consider the effects which collectivism brings with it, or the difficulty of introducing it, or the manner by which that state would have to be reached, it is shown in every respect to be condemned and warded off.

1. To begin with the EFFECTS, let us observe first that, when collectivism is in force—or rather, when it rages—private men are prohibited from every art, every business of their own, and every gain or profit from their own property or industry; while all arts must be exercised either by the State or, as they prefer, by immense corporations which each possess an absolute monopoly in their own function throughout the commonwealth, so that individual corporations are placed over individual arts. For it would be utterly foreign to the rationale of collectivism that there be several associations contending with one another. Neither schools nor printing works can be excepted from a monopoly of this kind. This is admitted among the doctors of socialism, who, trusting in these means, foretell equality of fortunes and the end of economic anarchism. *Equality:* for they say that the wages of personal labor, beyond which nothing is acquired, will differ little among themselves, while whatever difference there may be will soon be suppressed, since they can be employed by their owner only for an unproductive use. *The end of economic anarchism:* for when the exercise of the arts has been reduced to unity, they contend that there will be present only that quantity of individual things which is sufficient for society, neither more nor less.

But now, with the effects considered, this economic rationale:

a) Is opposed to abundance and plenty of things in society. For through it the stimulus by which men are accustomed to be aroused to increase their labor is blunted: a notable increase of profit and the hope of fruitfully spending the wage obtained; while the stimulus to render careful work, to perfect the arts, and to discover and attempt new things is wholly suppressed—unless one would prefer to return to prices, commerce, etc. Indeed, not only the will to work but the very ability and skill are taken away from the citizens. For while the keenness of the mind is sharpened in a remarkable manner by undertakings assumed at one's own judgment and risk, it is rendered more obtuse by the habit of laboring under the direction of others. To this is added that the directors of those administrations offer but slight hope of industrious prudence and integrity, especially when they must be designated by popular suffrage, and that most frequently. Yet errors committed by them must disturb the whole of society: for individual arts depend entirely upon individual administrations, since these enjoy a monopoly.

It is opposed to the liberty of the citizens. For those who now occupy the place of wage earners would not cast off a master but would change him: in place of a private man or a particular society, the State or a privileged corporation would enter. But the remaining citizens would either be thrust down to a condition similar to that of wage earners or, as ministers of the collective administration, would receive the management of some part of the innumerable administrations which would be necessary for the State of which the socialists dream. Besides those two orders of citizens, sufficiently diverse in their pursuits yet equally subject to another's authority and lacking liberty, there would be no place for any third order. Therefore, there would remain no power capable of resisting the tyranny of a few—a tyranny, I say, of the most absolute kind. For those who prevailed in the commonwealth would have subject to themselves all the sources by which citizens are nourished, are educated (the

schools), and profess their opinions and censure abuses (the press). Nor does the refuge sought in various corporations which would administer the individual arts avail. For unless these were under the judgment and power of those who preside over the whole of society, by what compact would the agreement and harmonious cooperation of those various corporations in their work be preserved? And why should we complain of the dominion of the State, when already in the individual corporations the directors would impose a harsher yoke upon the necks of the citizens? Nor, because they were appointed by suffrage, would they have a lesser power of oppressing; but, as experience testifies, they would conceive a greater will to harass on account of rivalries and contrary party zeal.

Moreover, would it be permitted to the judgment of the directors that they admit or exclude members? The abuses of the ancient guilds would return a hundredfold! Would they be compelled to receive everyone? What if more or fewer offered themselves in number than was proper? If more, would you pay a lower wage to the later ones? By what right this inequality, by which a certain privileged quasi-ownership in some art would belong to the earlier ones? Or would you establish a lower wage for all? How many complaints there would then be! And thus you would already depart from that famous law of value which declares that all things are to be valued from labor. In like manner, if fewer persons than were necessary wished to devote their labor to an unpleasant work, you could not attract others by a greater wage without abandoning the rationales of collectivism.

Nor is this the end of the difficulties. For greater wages would then be assigned to the less esteemed arts, for which all are qualified. And so, in a short time, one would pass from a scarcity to the contrary excess of those who wished to exercise those arts, so that a notable difference in wages could not long continue. But if only a slight difference were established, nothing would now effectually attract citizens to unpleasant labor, especially since, according to the tenets of socialism, no worker can be denied the wage by which he may comfortably provide for himself and his own. Therefore, as though it were a fatal evil, they would introduce a new genus of servitude by which miserable citizens would be deprived of the choice of their very labor.¹⁸

¹⁸ Certainly, neither is an infinite choice granted now; yet some choice is had, and the necessity which compels is that of circumstances and ability, not a hated command and coercion.

Moreover, to say it in passing, it is no longer apparent how, once the faculty of leasing or selling a house has been suppressed, someone could freely change his domicile.

It is opposed to thrift and good morals. For one who has no means of usefully spending the fruits of labor which remain over is generally prone to prodigal dissipations. Nor are the motives by which men are drawn to socialism of such a kind as favor continence and sobriety. And so, if it reigned, it would appear that there was no longer any need to act concerning the moderation of desires or the ordering of morals.

It is opposed to the happiness of the citizens. Modest means would answer to an insatiable thirst for pleasures. The tenor of life would be rather uniform. There would be no joy from one's own goods, which would have the form of barren paper; none from the family or from the education of children: the authority and providence of parents would be abrogated, and they would no longer think that, in their children, who continue their own person, they would survive; there would be no joy from a beneficent and liberal disposition: the occasion and means of bestowing a benefit would equally be lacking. Common pursuits and advantages now join citizens to one another by many and various

bonds: hence conversations, undertakings, mutual services, and relations which do not lack their own pleasantness and by which social intercourse itself is, as it were, nourished. In the socialist state, apart from societies merely for pleasure and factions divided by hatreds, citizens would rather be placed beside one another than joined and harmoniously mingled. Indeed, in the individual administrations, from opposing parties, from the affairs to be conducted, from the labor to be evaluated, and from the fruits to be divided, would there not be infinite causes of dissensions, complaints, and corruption?

It is opposed to nature itself, and could only be introduced or maintained for some time by force. For the causes of manifold inequality would have to be constantly prevented; the appetite for gain and the will to govern one's family and children would have to be prohibited; the independence of the person would have to be taken away.

The supporters of that system neglect very many lessons of perpetual experience: for example, that men are prone to laziness and sloth; that most are moved very little by the remote consequences of their vices;¹⁹ that the multitude is especially prone to tyrannical oppression, etc.

¹⁹ If we are now unable to persuade many wealthy men to abstain from luxury and from vices which furnish arguments to the socialists, what hope will there be of moving the minds of all men by some law which they call the law of solidarity—which, moreover, if we attend well, is not absent from our rationale of society?

2. As regards the DIFFICULTY of introducing collectivism, it is judged so great by prudent men that very many declare that it can never be overcome. Nor do they themselves deny that, as regards the manner in which the order is to be positively constituted, most things are still uncertain.²⁰ To the intrinsic difficulty is added the extrinsic difficulty, which is not to be scorned, of those who are hostile to that order. With these things posited, we argue briefly from this head as follows:

²⁰ Cf. the pamphlet *Bebel und sein "Zukunftsstaat" vor dem Reichstage* [Bebel and His "Future State" before the Reichstag], and the book *Le Socialisme en Belgique* [Socialism in Belgium] by Destrée and Vandervelde, part 2, II, *Le collectivisme* [Collectivism].

He commits a crime who disturbs society and undertakes new things which neither appear better nor are proved capable of being effected. Therefore, the undertakings of the socialists are criminal.

3. But the MANNER in which they think to prepare the new order is that they will that many goods of private persons be usurped by the State, and that they lead civil authority beyond the limits assigned to it by nature. Therefore, by illicit means contrary to the common good,²¹ they prepare the way for a new order which appears to be composed of contradictory notes. A new order, I say, the hope of which shines upon them as more and more distant and late from day to day.²²

²¹ They themselves admit that the tyranny of the public power is by no means desirable, and they repel the charge that they will to commit all things to the providence of the State. Cf. Destrée and Vandervelde, op. cit., p. 262 f.

²² As is reported, Rodbertus fixed the end of the present economy at 500 years, Lassalle at 200.

We omit several things which can be found in treatises which deal with socialism alone;²³ for "there is a measure in things" and in speaking. But the things which we have given are enough and more than enough to persuade all who consider the matter with a sincere mind how just a censure the Supreme Pontiff branded upon collectivism when he wrote in the Encyclical *Rerum Novarum*: "And besides the injustice, it is also exceedingly apparent what a change and disturbance of all the orders would follow, and what harsh and odious servitude of the citizens. An approach would be opened to

mutual envy, to detractions, and to discords; with the stimuli to the talent and industriousness of individuals taken away, the very sources of riches would necessarily dry up; and that equality which they fashion in thought would in reality be nothing other than the equally wretched and ignoble condition of all men, without distinction.”

²³ Cf. the cited works of Cathrein, Castelein, Leroy-Beaulieu, etc.

B. CONCERNING MIXED OR AGRARIAN COLLECTIVISM. This form of collectivism is no less to be rejected in itself:

1. Because it logically infers pure collectivism. For not only lands but very many things—especially those by means of which arts or businesses are exercised, and silver or gold coins themselves—possess an intrinsic value which has God as its immediate author and is not the fruit of human labor.

Therefore, the cause on account of which they deny the private possession of lands is common to all these things, which consequently, as pure collectivism wills, are to be placed outside the commerce of private persons. Nor is the very genus of emolument which is designated by the name of rent strictly so called anything proper to the possession of lands.

2. Because it concludes falsely. For the rationale upon which it rests by no means proves that lands are in the common dominion of some nation. Why, indeed, should that which they affirm concerning individual men not hold concerning individual nations: that only those things which are the offspring of one’s own labor can be usurped as one’s own? And why is it lawful for a particular nation, rather than for particular persons, to vindicate as its own that which nature established for the utility not of one nation but of the whole human race? Does not one nation—for example, that of the French—by an occupation plainly similar to that by which one man excludes another from his land, exclude from its territory peoples who inhabit less fortunate lands and enjoy a less favorable climate?

3. Because the common possession of lands would make citizens too subject to the civil power, which would thereby take an easy occasion for any tyranny.

4. Because it deprives human societies of the advantages which private possessions of lands bring. In these there is, most especially, as we were just saying, a power of resisting tyranny; through them citizens are effectually aroused to improve lands and make them better; these possessions foster industry and thrift, while they provide a means of investing money fruitfully and stably; from no other possession does a man receive greater joy, which, if the territory of the commonwealth has been distributed among sufficiently many, as in Belgium and France, can fall to the greater part of fathers of families.

5. Because, by usurping dominion over lands, the State would pass beyond its own field and would not obtain the hoped-for gain by which, as those collectivists contend, it could abstain from exacting other taxes. *It would pass beyond its own field:* for it is not the province of the State to remove, at its own judgment, from the commerce of citizens those things which nature made apt for possession. *It would not obtain the hoped-for gain:* for, in the judgment of experts, rent properly so called, which alone they will to be claimed by the State for itself, is not to be valued so highly. Cf. above, 181, B, the notions handed down.

6. Because, as affairs are constituted today among most nations, they cannot introduce their system without falling into the most manifest injustice according to their own tenets. For they do not reject the civil or industrial fruits of monies or riches. On the other hand, they will—H. George certainly does—that the owners of lands be stripped of their rent without any compensation. But those who possess lands today generally hold them immediately or mediately from a purchase by which, in good faith, they invested in lands money which could have been invested elsewhere usefully and fruitfully. Therefore, unless these men receive compensation, they lose not only the soil itself but virtually also the riches which were represented by the soil.

But if you will that compensation be given, the treasury will lack resources. For the rent of lands does not exceed 2 or 3 percent, while the State would procure for itself only at greater interest the money which it would have to receive as a loan to purchase the lands.

Moreover, what portion in the leasing of lands today has the rationale of rent properly so called can scarcely, if at all, be defined.

Cf. the several things which Rev. Fr. Holaind discusses excellently concerning this matter, and the distinguished testimonies of the greatest doctors which he adduces.

183. III. Difficulties. A. FROM THE RATIONALES OF PURE COLLECTIVISM.

1. **IN THE NEW TESTAMENT, RICHES AND THE RICH ARE MORE THAN ONCE VEHEMENTLY CONDEMNED.** Thus, for example, in St. Matthew 19:24: “It is easier for a camel to pass through the eye of a needle than for a rich man to enter into the kingdom of heaven”; in St. Luke 6:24 ff.: “But woe to you who are rich,” etc.; and, in chap. 16, the parable concerning the rich man and the beggar Lazarus. In his catholic epistle, St. James inveighs most bitterly against the rich. **Therefore.** The New Testament tacitly commends that order of society in which there will no longer be a place for accumulating riches; that is, it approves the regime of collectivism.

Reply. I distinguish the antecedent. In the New Testament, riches and the rich are condemned absolutely, **I deny**; they are condemned in a qualified respect, as things often full of spiritual danger, whether from the unjust means by which, especially then, monies were generally acquired; or from the inhuman hardness of many rich men; or from the excessive affection with which riches are customarily possessed and which strives to cast the heart down to the lowest things,²⁴ **I concede. I distinguish the consequence.** The New Testament commends a different order in which, by the law itself, fortunes are directly or indirectly distributed equally, **I deny**. It commends the voluntary pursuit of poverty, at least spiritual poverty, by which the poor willingly lack riches, while the rich, through the grace of God, are detached in mind from earthly desires and from the danger of riches, **I concede.**

²⁴ Cf. Rev. Fr. Castelein, *Le Socialisme* [Socialism], etc., chap. 15.

That the passages of the New Testament are to be understood in this way is easily established.²⁵ For those who are set down as rich in St. Matthew are described more accurately in St. Mark 10:24 as “those who trust in riches.” Although the similitude of the camel signifies a thing which cannot be done, as St. Jerome says,²⁶ in truth the Lord wills only to inculcate the extreme difficulty of the matter, which He nevertheless affirms, through the grace of God, is not insuperable. The rich to whom evils are foretold (“woe to you”) are presented by St. Luke as wholly surrendering themselves to earthly joy, so that, being “filled” with present things, they have no care for future things. Finally,

the rich banqueter shows himself unmerciful toward Lazarus. What St. James pursues with the whole force of his words is that life and morals correspond to the Christian faith (chap. 2, v. 14 ff.). Therefore, when he sees that earthly things are valued too highly among the faithful, he strives sharply to impress upon their minds how vain present goods and life are (chap. 1, vv. 10 and 11; chap. 4, v. 13 to chap. 5, v. 5); and he vehemently rebukes the wealthy who have defrauded the wages of the workers (chap. 5, vv. 3 f.); nor does he will the poor to be despised (chap. 2, vv. 1–9); while at the same time he does not neglect to censure the impatience of the poor (chap. 5, vv. 7–11), nor does he exclude the rich man from the law of charity (chap. 2, v. 8). To say it in a few words, he wills that Christians, detached from the concupiscences of this world (chap. 4, vv. 1–4), become accustomed, if they are placed in a humble station, to glory in their spiritual exaltation (chap. 1, v. 9, and chap. 2, v. 5), and, if rich, humbly to endure their soon-perishing opulence (chap. 1, v. 10).

²⁵ Thus St. Ambrose himself: “The authority of the heavenly sentence condemns not those who possess riches, but those who do not know how to use them.... Therefore, not wealth but affection is at fault.” (*Expos. in Luc.*, bk. 5, no. 69; Migne, vol. 15, col. 1654.)

²⁶ Epistle 120, *To Hedibia* (Migne, 1st series, vol. 22, col. 984).

Moreover, in the New Testament, the rich young man himself is said to have observed the commandments which suffice for one to enter into eternal life; a rich man, Joseph of Arimathea, is narrated to have been a faithful disciple of the Lord (Matt. 27:57); those who make alms from the “mammon of iniquity” are praised. It is called unjust because it is often joined with sin. (Cf. 1 Tim. 6:6–10.)

Finally, as regards the rationale by which we distinguished the consequent, in the Gospel there is given no precept of divesting oneself of goods, but a mere counsel (“if you wish to be perfect,” St. Matt. 19:21). How one is to act toward the rich is expounded thus by St. Paul (1 Tim. 6:17–19): “Charge the rich of this world not to be high-minded, nor to hope in the uncertainty of riches, but in the living God (who furnishes us abundantly for enjoyment); to act well, to become rich in good works, readily to give, to communicate, to treasure up for themselves a good foundation for the future, that they may apprehend true life.” In sum, “The time is short,” says the Apostle (1 Cor. 7:29–31): “it remains that ... those who weep be as though not weeping; and those who rejoice as though not rejoicing; and those who buy as though not possessing; and those who use this world as though not using it; for the figure of this world passes away”; and previously (7:20–21): “Let each one remain in the vocation in which he was called. Were you called as a slave? Let it not concern you.”

2. PURE COLLECTIVISM IS NOT REPUGNANT. For:

a) The forms of possessions have varied according to times and places. How many privileges have become obsolete! Do we not see every inequality becoming subject to greater envy from day to day? By what just hope do the rich of today presume that the present regime of goods will be perpetual and that their privileges will remain forever?

Reply. The collectivists undeservedly seek protection for their cause from that variation in the regime of possessions. Although we promise no absolute firmness to the present regime, we nevertheless resolutely deny that an order which agrees with their dreams can ever flourish for a notable time. For

these dreams, as we showed in the proof, do not agree with the common character, inclinations, and vices of men, such as have been known from the remotest antiquity.

Hence, “in form,” you will speak briefly thus: The present regime will vary, **I concede or pass over**. It will end in collectivism, **I deny**.

Observe also the improper and unusual acceptance by which the advantages which the rich derive from their resources are numbered among privileges. For privileges are special laws enacted in favor of certain persons, while, by civil law, the poor today are almost everywhere equal to the rich.

b) In not a few regions citizens rejoice in monopolies by which the State has recalled to itself the carriage of letters, telephony, etc.; the same persons desire railways, etc., to be purchased by the State. Why could mines, then large estates, next lands, and finally all productive things not equally well be assigned to the State?

Reply. I merely pass over the antecedent, since these monopolies and undertakings do not lack their own disadvantages. **I deny the parity:** both a) because nothing can be gathered concerning other, more difficult and intricate administrations from some administrations of a simpler form; and b) because that which perhaps fits some part can even less be transferred to the whole. For so long as few businesses in number are thus undertaken publicly, neither is private opportunity for spontaneous effort lacking nor is a means of reducing the citizens to perfect servitude conferred upon the State.

Moreover, **I deny this supposition:** that while the State undertakes such things it already exercises collectivism in part. For in these administrations it acts as a private person; and from the manner in which it assigns their wages to its administrators and from the entire ordering of the business, it imitates private undertakings as much as it can. Cf. Leroy-Beaulieu, *Le Collectivisme* [Collectivism], pp. 345–348.

N.B. We by no means deny that in some regions mines can belong to the commonwealth, or that the fiscal dominion of the State can usefully be increased. We nevertheless judge that greater prudence and circumspection are needed today than formerly, since public powers are too prone to favor that indolence of the citizens by which, freed from their own solicitude, they more readily than is proper place every concern in the providence of the State. Cf. Destrée and Vandervelde, *Le Socialisme en Belgique* [Socialism in Belgium], pp. 278–281.

c) Businesses which are successfully conducted by “anonymous” companies increase from day to day in number and importance. Does it not become manifest from this how much collective managements of businesses can accomplish? Do they not announce in advance those great companies to which the collectivists will that monopolies of arts and businesses be committed? Cf. Destrée and Vandervelde, *ibid*.

Reply. Besides the fact that “anonymous” companies excel other companies only in the facility of gathering immense sums of money, while they are far inferior to others whether you attend to care or to expenses, and that the miseries of workmen and the resentments of our times can chiefly be traced back to their inhumanity and avarice—besides all these things, I say, those companies by no means approach the rationale of collective management which the adversaries proclaim. For by both wages and the share of profit promised to them, the men who preside over the company are impelled by

their own emolument to conduct affairs well; and by the power with which they are endowed, they can almost be compared to an owner who manages his own affair. Add also that “anonymous” companies are now aroused by competition, which would be wholly abolished when collectivism raged. Cf. Leroy-Beaulieu, *op. cit.*, pp. 348–351.

3. COLLECTIVISM IS TO BE INTRODUCED:

a) For in great factories and shops, which will shortly consume the smaller undertakings, riches are produced collectively. But it is necessary that the rationale by which arts and businesses are exercised correspond to the rationale by which they are administered and by which the division of the fruits is made. Therefore, those two rationales can no longer be individual, but must be ordered collectively. Cf. Bernstein, *op. cit.*, p. 14.

Reply. Nowhere are arts exercised in the manner which the collectivists will; nor is it any more repugnant that many give their labor to a business which belongs to one than that the regime of a whole state be monarchical. Finally, the division of the fruits sufficiently corresponds to the rationale by which the arts are exercised as soon as all, whether as partners or as wage earners, receive a suitable recompense for their merits.

Moreover, in their manner, the collectivists greatly magnify matters in speaking; and they wander far from the truth when they announce the swift ruin of modest undertakings. For there are not a few things which are enlarged with little fruit; and nothing is usefully increased beyond certain limits.²⁷ And so, “in form,” we shall speak thus: Having passed over the major and the minor, we deny the consequence and the consequent. For that administration by which the arts are conducted well corresponds to the rationale of exercising the arts, as does that division of the fruits by which each one obtains his own.

²⁷ Cf. Conrad, *Handwörterbuch* [Concise Dictionary], s.v. *Grossbetrieb und Kleinbetrieb* [Large-Scale and Small-Scale Enterprise].

b) It is necessary that the present “abuses” be taken away; that the economic anarchism cease by which riches are produced rashly and fortuitously in a quantity which exceeds the measure or remains below necessities; that infinite riches no longer perish for the whole of society through the prodigal dissipations of a few. **But.** Collectivism alone will tear these things out by the roots. **Therefore.**

Reply. I distinguish the major. It is necessary that, by carefully guarding against the introduction of greater evils, we oppose present evils as much as can be done, **I concede.** It is necessary that any remedies whatsoever be applied to evils without consideration, **I deny. I concede the minor.** Collectivism alone will tear out present evils by the roots, **I distinguish.** All of them, **I deny.** Some of them, **I subdistinguish.** Prudently, **I deny.** Rashly and by introducing worse things, **I concede.**

As regards economic anarchism, for example, besides the fact that it is not absolute, since citizens are moved by their own utility to inquire into the quantity of things from which they can hope for profit, and those who are engaged in the same arts have already begun to take counsel together for this end, it can be doubted whether a balance of things is not found better, as though of its own accord, than if you will to establish it deliberately for all. Thus, to adhere to the examples of D. Leroy-Beaulieu,²⁸ in the human body the natural powers nourish and restore the various parts of the body better and distribute the blood more suitably than the deliberate care and providence of our reason could ever accomplish; thus, by the labor of many who, with no counsels communicated, individually care only

for their own parts from a pursuit of their own gain, it happens that without difficulty immense cities—for example, London—lack no necessary provision, while nothing is more difficult than deliberately and thoughtfully to equip even a small army with suitable food.

²⁸ Op. cit., p. 320.

But dissipations would increase beyond measure if collectivism were introduced, since it sharpens the pursuits of pleasure and almost entirely removes the stimuli to labor and thrift. Now, by contrast, comparatively few are those who prodigally squander a patrimony. Add that the greater part of fortunes which are dissipated is extinguished indeed for the prodigal man, but not for society itself, since monies prodigally given reach many who can usefully expend them.

In the proof itself we indicated what worse evils collectivism would bring with it.

c) The same right to live is present in all men. **Therefore.** It is necessary that the same access to the sources of life lie open to all. But this is not had unless the goods by which riches are produced are common.

Reply. I distinguish the major. The same right to life is present in all, insofar as the life of all must be equally inviolate, **I concede**; insofar as the tenor of life of all ought to be the same, **I deny. I distinguish the consequence likewise.** It is necessary that the same access to the necessary sources of life lie open to all, **I concede.** Hence, in extreme necessity, we say that it is lawful for all, by whatever means they can, to take the necessary food for themselves. It is necessary that the same access to non-necessary sources lie open, **I deny.**

Moreover, not even the collectivists are able to press that principle. For the immediate sources of life are the things which men use. **Therefore.** If their statement were true, a community even of this genus of goods would have to be introduced.

d) The right of each one to the fruit of his labor is inviolable. **But.** In the present regime most are compelled to yield the fruit of their labor to others. **Therefore.** It is necessary that another order—collectivism—be introduced, by which this iniquity is taken away.

Reply. I distinguish the major. That right is inviolable, yet in such a way that labor itself can be sold or leased, in which case the fruits of the labor are to be assigned to the buyer or hirer, **I concede.** Otherwise, **I deny.** Cf. below, where the hiring of labor is treated. **I contradistinguish the minor.** Today most are compelled to yield the fruit of their labor to others who have bought or hired it, **I pass over or concede.** The fruit of labor truly their own, **I deny.** To contend this, it is necessary to argue from the false theory concerning value which bears the name of K. Marx.

B. FROM THE RATIONALES OF MIXED COLLECTIVISM.

1. RENT PROPERLY SO CALLED FROM LANDS BELONGS BY RIGHT TO THE COMMUNITY. For:

a) Lands, since they are a work of God, can no more properly be acquired by private persons than the sun, the wind, and the sea.

b) Rent itself properly so called has as its cause, not the possessor of the land, but society itself. **Therefore.** It is to be assigned to society, not to the possessor. Thus, approximately, H. George in the first part of his epistle to the Supreme Pontiff.

Reply. I deny the antecedent. And to the rationales:

To a), **I deny** that things which are works of God cannot be acquired by private persons.

For this acquisition is repugnant neither to the supreme dominion of God, which is preserved intact, nor to the end for which God destined those goods for the use of men, since private possessions are necessary for the common good itself. Cf. below, the instance by which they contend that private possessions of lands are opposed to the common good. But the rationale why the sun, the wind, and other things of this kind are not in themselves matter of dominion is drawn not from their origin but from their nature, by which, without anyone's appropriation, they serve individuals. Perhaps the same could be said concerning the sea. Or at least men understood that it was not expedient for the high sea to be under anyone's dominion. Therefore, by the law of nations, the high sea—but by no means the part adjoining the shore—has been placed outside commerce.

Moreover, by such an argument it is by no means proved that dominion is common to some nation; and, if you will to speak consistently, the private property of movable things will also have to be denied. Cf. the argument of the thesis.

To b), **I distinguish the antecedent.** Rent properly so called has as its cause society itself taken collectively, or the commonwealth itself, **I deny**; it has as its cause many private persons who belong to society, **I subdistinguish**: sometimes, **I concede**; always, **I deny**. **I distinguish the consequence.** **Therefore**, this rent is to be assigned to society, that is, to the commonwealth itself, **I deny**; to those many persons who are sometimes its cause, **I subdistinguish**: always, **I deny**; sometimes, **I subdistinguish**: if this attribution would be a reasonable wage for the labor of any of them directly contributed to this end, **I concede**; otherwise, **I deny**.

As we argued in the proof, George, deceived by Ricardo, regarded no increments of rent other than those which arise from the multitude of men, which entails the dearness of all things. We indeed admit that this is a gain for the owners of lands; yet not for them alone, but also for those who possess houses and exercise various arts. But, besides the fact that this cause is not the only one, as we saw in the proof, is it of such a kind that the commonwealth itself can claim it for itself? To use a most familiar example, we all know how greatly houses and neighboring lands increase in price from a gathering of men in the same city. What is the cause why they desire to inhabit one city? Certainly none other than some private pursuit of pleasure, utility, etc. Therefore, the action of public society, formally taken, does not of itself appear here; nor do the private persons themselves directly devote any labor to the possessors of the lands in such a way that they can reasonably exact from the owners of the lands some wage for labor: rather, they already find this of itself in the advantage sought. Moreover, what each person indirectly contributed to that increment of rent cannot be defined. But there are innumerable occasions on which the action or omission of some profits or harms others. Therefore, there would be the greatest confusion of rationales and rights unless we stand firmly by these principles: damages are not to be repaired from justice except those by which someone has injuriously been deprived of his own good; nor are useful services to be compensated by a price unless someone has burdensomely divested himself of his thing, or of the use of his thing, for the benefit of another.

Finally, to omit the several things which were indicated in the proof, what if, as also happens, a people abandons some place, or customs duties are changed, so that the lands thereby become

cheaper? Will H. George stipulate restitution for the possessors from public money? If he does not, it is apparent that he fights against himself.

2. THROUGH AGRARIAN COLLECTIVISM ALONE, PROVISION IS SUITABLY MADE AT ONCE FOR THE NEED OF THE STATE AND FOR THE INVIOLEABLE RIGHT OF EACH PERSON IN HIS OWN THINGS. For unless it receives the rent of lands, the State will exact other taxes which partly take away from the citizens the fruit of their labor; and this is unjust. Cf. the same epistle of H. George.

Reply. I entirely deny the antecedent and the added rationale.

For neither will suitable resources be available to the State from that rent, nor is it unjust to exact that citizens contribute to the common good even from their labor. Cf. the proof of this thesis and the thesis concerning taxes.

3. PRIVATE DOMINIONS OVER LANDS HARM THE COMMON GOOD. For:

a) How many evils have arisen from large estates in the Roman countryside, in Ireland, in Scotland, in Australia, and in America; how many from the various practices (*speculations*) by which, through buying, selling, etc., lands in America, a few citizens abound in infinite riches who appear to hold honest labor in contempt. Cf. H. George, the same epistle, part 2, nos. 3, 5.

Reply. To these and similar things the response is easy. They cast back upon dominions over lands the vices or abuses of a certain form of regime which is neither universal nor perpetual. They omit, moreover, that similar things can be objected against dominions over movable things; nor do they compare the utility with the disadvantages.

b) **(A difficulty similar to the preceding.)** By their stability and security, private possessions of immovable things are the cause of the perpetual and daily increasing preponderance of a few in society; and these, soon wasting away in idleness and sloth, will nevertheless hold in their power the most precious sources of riches. Who does not see with how much detriment to the commonwealth?

Reply. Here again the adversaries are thinking of the large estates of certain regions. To this rationale we answer briefly that the law of inheritances (*droit successoral*) can easily be constituted in such a manner that it effectually opposes an evil of this kind. Let France and Belgium be examples, where no one seriously complains of the excessive perpetuity of lands in the hands of the same persons.

c) The owners of lands are necessarily opposed to those who strive to make gain from labor or monies. For besides those who procure wages for themselves by laboring, or who, by investing monies, receive interest, there are no longer any who make some profit except those who collect rent from things possessed. Therefore, all the returns of some nation are represented by rent, interest, and wages, so that it can be written:

Sum of returns – rent = wages + interest.

But since rent continually increases, while the other things continually diminish, it is apparent that the owners of lands, from their rent, impede the prosperity of others.

Reply. Both the things affirmed by this argument and the things supposed are equally foreign to the truth.

We know by experience that rent diminishes, while interest and wages increase—whether you consider those wages which are assigned to individual workers strictly so called, or, as the correct understanding of the formula just handed down demands, you take all personal industry, of whatever rationale, even the most noble, and attend to the part of the returns which is obtained by those who, taken together, devote some labor.

It falsely supposes that rent cannot increase otherwise than by subtracting from the portion which falls to wages and interest, whereas, from the very abundance of fruits, more can be assigned to one without harm to another.²⁹

²⁹ For since the people themselves generally increase in number, it happens that a greater abundance of fruits is sold at the same price as before. It is apparent that abundance of this kind favors rent itself.

It falsely supposes that the sum of returns would be the same if rent were suppressed, whereas, with this stimulus to industry and labor taken away, it will easily happen that the fields are cultivated and the arts exercised with less care.

It falsely supposes that all the rent received remains with the owner and profits him alone, whereas with the aid of rent wages and interest are paid, and the arts themselves are fostered, by which the cause of wages or of money lent at interest is greatly assisted.

It falsely supposes that wages and interest will be notably increased from the fact that the State obtains the rent in place of a private person. Cf. Rev. Fr. Holaind, pp. 127–129.

4. PRIVATE POSSESSIONS ARE UNJUST.

a) For he would be guilty of injury who, arriving beforehand at a public circus, thereafter prohibited those arriving after him from taking a seat for themselves. **But.** Those who, because an earlier birth allowed them to occupy the lands first, now exclude others from the same lands conduct themselves in this manner. **Therefore.**

Reply. I deny the assertion. To the argument and the similitude already employed by Cicero and St. Basil,³⁰ **I distinguish the major.** He would be guilty of injustice who prohibited those arriving thereafter from a vacant seat, **I concede;** from a seat occupied by themselves, **I deny. I contradistinguish the minor.** Moreover, observe that the owners alone do not enjoy the lands. For, to pass over those who, by buying produce, are nourished indirectly by the fertility of the lands, the steward and many workmen seek their sustenance from agriculture. Cf. Cicero, *De finibus*, etc., bk. 3, no. 20.

³⁰ Homily on the passage of Luke, “I will destroy,” etc., no. 7 (Migne, vol. 31, col. 275).

b) Private possessions have a vicious origin: violent oppressions and unjust spoliations. Think of Ireland, the plundering of monasteries, etc. **Therefore.** These possessions are to be taken out of the way.

Reply. I deny the consequence.

We admonish first that this grave objection can be made against the private possessions of certain regions, and not against all, but only against a part. Nor, even there, was this the first origin of the regime. Moreover, not a few possessions have come into the hands of those who in good faith and by legitimate prescription can deservedly consider themselves entirely secure. Finally, that which the

adversaries will to conclude is in no manner effected from the things proposed. The consequent is only that possessions are to be restored to the true owners, if they become known, and not that a regime contrary to the common good itself is to be introduced.

N.B. 1. Certain other things which are said to the contrary return to this point: that they will a just title of dominion to be sought from labor alone. This rationale, no less contrary to the possession of movable things than of immovable things, will be dissolved in the next following thesis by the very argument by which we shall vindicate the right of possessing external things.

2. There is no time to linger over the facts from which the collectivists try to draw arguments. Nor does this pertain to our intention. For we do not deny that certain possessions are held by clans or municipalities; nor have we placed agrarian collectivism in the number of those things which are plainly incapable of being effected. But the adversaries strive in vain unless by their examples they show that a community of possessions, and a general one, is expedient for the very progress of civilization. But so far are they from establishing this that de Laveleye himself wrote³¹ that it is established by fact that the progress of agriculture is joined to the progress of property. Concerning those facts—for example, concerning the *mir* of the Russian empire and the *Allmenden* of Switzerland—let the authors who have been especially occupied with these matters be consulted. Thus, as regards the *mir*, cf. P. Leroy-Beaulieu, *Le Collectivisme* [Collectivism], or A. Leroy-Beaulieu, *L'Empire des tzars et les Russes* [The Empire of the Tsars and the Russians]; as regards the *Allmenden*, P. Leroy-Beaulieu or de Laveleye himself.

³¹ “The parallel progress of property and agriculture: this is the important fact which the latest research brings more and more into relief.” *La propriété et les formes primitives* [Property and Primitive Forms], at the beginning. Cf. other testimonies in Holaind, pp. 77, 116.

3. Rev. Fr. Holaind has not a few useful things concerning agrarian collectivism, op. cit.

Article III. Supplements to the Doctrine

I. COROLLARIES

184. Anarchism is to be rejected much more than collectivism: not only that practical anarchism which undertakes war and wills to dominate in the commonwealth by force, but also doctrinal anarchism, which says that dominions and the economic administration of things are to be transferred to perfectly autonomous municipalities. For it adds this to the common vices of socialism: that it does not even think of taking away economic anarchism, which, once a society and authority superior to the municipalities had been denied, would soon become supreme.

185. Although mixed collectivism logically ends in pure collectivism, it is nevertheless not to be refuted by the same arguments; nor can H. George¹ and most who merely will that lands belong to the commonwealth be numbered among the socialists.

¹ “We separate ourselves at once from the anarchists and from the socialists. We judge that they err in opposite senses: the one by failing to recognize the social nature of man, the other by failing to recognize his individual nature.” H. George, *Lettre au Pape* [Letter to the Pope], French trans., p. 91.

186. Between liberalism and Socialism there prevails, at first appearance, the greatest disagreement, since the former wills private possession of things to be as absolute as possible and

does not will arts and commerce to be confined by laws—two things which are plainly contrary to the proposals of socialism. Nevertheless, as we already intimated above, in their other pursuits and doctrines they are so joined that socialism can deservedly be regarded as the genuine offspring of liberalism. And in truth:

1. If we consider what the ideas of Liberalism were:

a) It banished religion among private matters, of which there is no public care, and without regard to which laws are enacted and rules of morals established. These things are plainly approved by the socialists.

b) It assigned to the people the origin of law and of every power, while it attributed an absolute and infinite force to civil decrees, as though they were the supreme rules and sources of rights. Socialism does not act otherwise, except that liberalism considers among the people chiefly citizens of a certain property qualification or learning, while socialism considers the multitude of proletarians. Cf. the things B. Malon wrote concerning the character of the French Revolution, *Précis de Socialisme* [Summary of Socialism], chap. 5.

c) From the beginning the liberals professed that liberty which denied divine rights; they praised that equality to which every privilege was odious. What do the socialists attempt except to shake off every yoke and to introduce equality of every kind?

d) The things which collectivism thinks to change in the regime of the family and marriage flow down an inclined channel from the theory of perfect divorce—a plague which liberalism generated.²

² “In sum, we do nothing but broaden the arguments which they (the liberals) caused to prevail in our legislation by establishing divorce in it.” Destrée and Vandervelde, *Le Socialisme en Belgique* [Socialism in Belgium], p. 351.

e) Philosophically, the liberals no less than the socialists celebrate the inborn goodness of man, which, without the restraint of authority or punishments, of itself embraces truth and virtue.

f) No one fails to see of how much use Darwinism³ and the evolutionism of liberal science were to the socialists.

³ Yet contrary to what Darwinism establishes, the evolution which the socialists defend occurs through the selection not of the better individuals but of those who of themselves are inferior and weaker. Cf. *Rivista Internazionale*, 1900, pp. 187–189.

g) The socialists borrowed their very doctrine concerning value from the liberal economists. Nor does the principle by which labor is regarded as the sole title of property favor them any less. Cf. the things said in Article I.

2. If you consider the deeds of Liberalism, the socialists owe it thanks:

For diminished faith and religious authority;

For “neutral” popular schools, which are seminaries of socialists;

For individualism and egoism, the evils and abuses of which are a most powerful argument for the socialists and most well adapted for persuading the common people of their case.

He who considers these things for a little while will easily see in socialism nothing but Liberalism for the use of the common people (*libéralisme à l’usage du quatrième état* [liberalism for the use of the fourth

estate])).

Cf., concerning this conjunction of liberalism with socialism, Rev. Fathers Pachtler, Cathrein, and Biederlack, cited works.

187. Whether Socialists belong to the genus of Freemasons. The Masonic sect cannot deny its affinity with the associations of socialists, since it “has the principal heads of doctrine in common with them.”⁴ Hence, indeed, the question arose whether those who embraced the cause of the socialists incurred the *latae sententiae* excommunication reserved to the Roman Pontiff, by which, according to the Constitution *Apostolicae Sedis*, §2, no. 4, the following are punished: “Those giving their names to the Masonic or Carbonarian sect, or to other sects of the same genus which plot against the Church or legitimate powers, whether openly or secretly; and likewise those furnishing any kind of favor to the same sects, or not denouncing their hidden chiefs and leaders until they have denounced them.”

⁴ Encyclical *Humanum Genus*, April 20, 1884.

Not a few, perhaps most, of the theologians who treat the question equate socialists with Freemasons. Thus, for example, Most Illustrious D. Gennari,⁵ Génicot.⁶ And they judge that the matter was declared by the Supreme Pontiff in the Encyclical *Quod Apostolici*, December 28, 1878. Yet, as we already wrote elsewhere,⁷ we cannot assent to that severity; but, relying upon the notions handed down above, we judge that there is need of a distinction by which we attend to the varied doctrine of the socialists and the varied rationale of their association.

⁵ *Monitore Ecclesiastico*, vol. X, p. 24.

⁶ *Theologia moralis*, II, 596.

⁷ *De prohibitione et censura librorum* [On the Prohibition and Censure of Books], no. 13, 9.

For the Supreme Pontiff himself described for us exceedingly well the sects of the Masonic genus in the Encyclical *Humanum Genus*, April 20, 1884, §“The sects of men are diverse,” etc., where he defined them by these notes:

a) By community of purpose and of principal maxims, they agree in reality with the Masonic sect; b) “Although they now appear to be very unwilling to remain hidden in darkness ... when the matter is thoroughly examined, they retain the genus and custom of clandestine societies. For many things similar to secrets exist among them, which it is the law to conceal with the most exquisite diligence not only from outsiders but even from a good many members: of this kind are their intimate counsels, the supreme leaders of the factions, certain hidden and internal meetings, and likewise their decrees and by what way and by what means they are to be accomplished”; c) they are joined together by a tight bond; hence “those who have been enrolled must promise and undertake that they will be obedient to the word of the leaders and masters with the greatest submission and fidelity; that they will be ready at any nod and signal of theirs to execute the things commanded; and that if they act otherwise, they do not refuse all dire things, even death itself.”

Come now, the first note does not appear to be absent from the associations of socialists. The remaining notes are perfectly adapted to the nihilists, to the socialists who excited disturbances in France in the year 1852,⁸ and to those groups of socialists which, in our days, prepared snares against the lives of rulers. Today, however, it happens that the societies of socialists are in no manner

clandestine and that the members are united by no tight bond, so that by the common people and by experts they are equated with a political party such as that of the liberals. If affairs stand in this manner,⁹ we do not see by what compact it is lawful for us to abandon the propriety of speech in order to extend censures and excommunications.

⁸ D. de la Gorce described these in the work *Histoire de la seconde république* [*History of the Second Republic*].

⁹ This several learned men confirmed to us concerning the socialists of Belgium. In England, the socialists are most varied in intentions and pursuits. Cf. P. Verhaegen, *Les socialistes anglais* [*The English Socialists*], chap. 12.

Certainly, when he issued the Encyclical *Quod Apostolici*, the Supreme Pontiff appears to have treated socialists, communists, and nihilists as of equal condition.¹⁰ But if you recall that the beginnings of the present party had then scarcely commenced, and indeed that in not a few regions its origin was more recent, you will easily perceive that the later fortunes and forms of socialism cannot be neglected by us. Indeed, the Supreme Pontiff himself, six years later, in the letter *Humanum Genus*, no longer said that all, but that very many associated groups of communists and socialists deliberately meditate the transformation and overthrow of all things.

¹⁰ Yet immediately they are described as “most closely bound among themselves by an iniquitous compact.”

Nor does it help to say that by the Constitution *Apostolicae Sedis* even societies which plot openly are punished, and that it is consequently not required that they be clandestine. For according to the letter *Humanum Genus*, the Masonic sects themselves now openly and manifestly attempt the destruction of the Church; and nevertheless “they retain the custom of clandestine societies.” Therefore, we deservedly require this note, especially since in the very article of the Constitution *Apostolicae Sedis* mention is immediately made of the hidden leaders of sects of this kind.

188. By what rationale the present social order is regarded as unjust by the collectivists. From the declared rationales of the socialists, it is sufficiently apparent that those who adhere to scientific socialism do not accuse those who today possess goods, hire workers, etc., of formal injustice.¹¹ For they admit that we, even unwillingly, are subject to the present regime, which not the free will of men but rather the necessary course of things brought about. Therefore, the iniquity against which they inveigh is objective iniquity, which is contained in the excessive inequality of citizens and in the spoliation by which, as they contend, the workers are deprived of a part of the fruits of their labor. These are for them signs of the future conversion to a better order; these they condemn and assail with their reproaches, that they may hasten the birth of a most blessed age.

¹¹ Cf., for example, Schaeffle, *Quintessenz des Socialismus* [*The Quintessence of Socialism*], chap. 2. And Marx himself has these words in the Preface of the work *Das Kapital* [*Capital*]: “I have not painted the capitalist and the landowner in rosy colors. But persons are at issue here only insofar as they are the personification of economic categories, the bearers of determined class interests and relations. My point of view, according to which the development of the economic formation of society can be assimilated to the course of nature and to its history, can less than any other render the individual responsible for relations of which he remains socially the creature, whatever he may be able to do to disengage himself from them.”

189. The true rationale of opposing socialism. Collectivism, as we have seen, conflicts too greatly with nature for it to be able to prevail for long. Therefore, more than their commonwealth, what is to be feared is the perversity of the opinions and desires with which the popular advocates of socialism infect minds, and the troubled times that threaten society from the vain promises by which they try to attract the common people to themselves.

But if you ask by what means a plague of this kind is especially to be warded off:

- a) Their true plans must be made manifest, lest they be able any longer to present themselves as in no way hostile to religion or to modest fortunes;
- b) Let us vigorously correct, in morals and institutions, the vices that furnish them with effective arguments by which they seduce the people;
- c) Let us also strive to make better, in temporal affairs, the lot of men of slender condition, so that the fewest possible causes of anger may remain;
- d) Let us devote our efforts to restoring religion, which alone both gives the mind an account of the present condition of men and persuades souls to endure those evils that cannot be removed.

By this way we shall show by the facts themselves how empty the dogmas of the socialists are, and we shall conceive a serious hope of obtaining respite from fear and protracted dissensions.

II. SCHOLIA

190. In Book II of the *Politics*, Aristotle sets forth several things which, although they attack a form of communism different from ours, can nevertheless fittingly be applied to the present controversy. We shall give a few examples.¹²

¹² We shall cite the passages from the Paris edition of Didot, 1848.

For that one cannot stop at some mixed or agrarian communism, he declares thus in chap. 4 (7), no. 12: "Phaleas of Chalcedon wishes goods to be equalized only in the possession of lands. Yet wealth consists also in slaves, cattle, and money; there is also much wealth in the equipment that is called household furniture, and in many instruments. Therefore, either equality among all these things must be sought, or they must be reduced to some moderate order, or they must all be passed over."

He himself also objects to Socrates (whom Plato introduces in the dialogue as an advocate of communism) that many things concerning the future state of the city are not defined. "For indeed, what the manner of administering the whole commonwealth will be when all goods are shared among them, Socrates has neither explained, nor can it easily be explained.... But whether these things are equally necessary or not, nothing at all has now been defined by him. Then neither has it been defined concerning the other classes, those nearest and those following thereafter, what their manner and discipline of administering the commonwealth will be, and what their laws. Nor is this easy to discover, and it matters not a little," chap. 2 (5), nos. 11, 14.

While the same Socrates, anticipating the socialists of today, promised that "his citizens would have need of very few laws indeed because of their discipline and education," the Philosopher answered: "The accusations and trials or actions, and whatever other evils he says cling to cities, will all be present among these citizens also," chap. 2, no. 13.

And after describing several disadvantages of communism, he offers, as though for our own use, this conclusion: "Therefore, the proposal of this law might indeed appear attractive and humane; for he who hears it embraces it gladly and eagerly, thinking that there will be a certain admirable friendship of all toward all.... But it appears altogether impossible that this manner of life should endure," chap. 2, nos. 8, 9. And elsewhere, in chap. 4 (7), no. 5, he says no less wisely that desires should be equalized rather than resources.

191. Whether possessions were originally common. Not infrequently, after the celebrated work of De Laveleye, *La propriété et ses formes primitives* [*Property and Its Primitive Forms*], those who favor mixed collectivism contend that lands were at first possessed in common. Although this supplies a futile argument, as though a return should be made to those beginnings, it is nevertheless useful to observe that this assertion is foreign to the truth. Cf. Capart, *La propriété individuelle* [*Individual Property*], and Cathrein, *Der Socialismus* [*Socialism*]. More recently still, Dr. Richard Hildebrand¹³ has rightly complained that several things are confused by the adversaries: they call things common when instead they are still ownerless; they regard the undivided but private possession of several persons as a collective form; nor do they distinguish the right of enjoyment from the right of dominion, or a certain right of governing goods from public property. The praised author adds that the more lands become comparatively scarce, the more they become private, and that the original form of property is not collective.

¹³ *Recht und Sitte auf den verschiedenen wirtschaftlichen Kulturstufen* [*Law and Custom at the Various Economic Stages of Culture*].

192. Concerning the iron law of wages,¹⁴ by which Lasalle contended that wages could not rise for long above the sustenance necessary for life, there is no reason for us to speak. For, repudiated by Marx, this doctrine, whose elements were in turn drawn from classical economics, was expunged from the proclamations of the socialists. Cf. Cathrein, *Der Socialismus* [*Socialism*], chap. 3, § 2 (p. 128, 7th ed.).

¹⁴ *Das eiserne Lohngesetz* [*The Iron Law of Wages*].

193. You will ask what is to be thought of those mitigations by which not a few of the socialists¹⁵ protest that they oppose nothing in small businesses and modest possessions.

¹⁵ Thus, for example, Destrée and Vandervelde, *Le Socialisme en Belgique* [*Socialism in Belgium*], pp. 259, 260. Cf., however, already pp. 361, 362.

Response. a) No credence can be given them; for they admit that they readily change their opinion and acknowledge no permanent dogmas. Moreover, there is no agreement at all among them, since the moderation that pleases some is censured by others as a deception.¹⁶

¹⁶ “È una mistificazione” [“It is a deception”], Marioni, in *Critica Sociale* [*Social Criticism*]. Cf., in *Revue Sociale Catholique* [*Catholic Social Review*], 1900, the articles of D. Vliebergh on agrarian socialism, especially pp. 123-125, 145, 146, 190.

b) That mitigation conflicts with their own principles. For since servants and wage earners are customarily employed even in modest businesses, these differ from larger businesses only in degree and not in kind, and are infected with all the vices that the collectivists propose to eradicate. What of the fact that more abuses have invaded the smaller workshops than the large ones?

c) Private undertakings of this kind, as long as they remained, would be an obstacle to the unity of the conduct of affairs and to the social administration whose advantages they extol with praises. Therefore, if they seriously defend this administration, they must abolish those undertakings.

d) Finally, would the State itself, which in the meantime would conduct the larger businesses, long endure with equanimity that private persons compete with it in skill and industry? This is hardly probable and is contrary to the custom of the State, as we can learn from the hatred with which, after it began to educate the young itself, it pursues private schools.

Therefore, these mitigations are merely devices by which they hope to remove fear from farmers and citizens of slender means, or they are employed by those who are less concerned about socialism than about winning votes for themselves.¹⁷

¹⁷ *Socialisme électoral* [Electoral Socialism].

But if some sincerely wish merely to restrain present abuses and to remedy the evils that afflict the proletarians, let them see whether they retain anything of the collectivists except the name, and whether they would not act better and more usefully by returning to the camp of Christ the Savior, who embraced the poor with a special love.

Chapter II: Concerning the Right of Private Property

ARRANGEMENT OF THIS CHAPTER

194. The present subject seems capable of being conveniently distributed into three principal parts.

In the first part we shall discuss conjointly the object of the right of private property and its causes: both the remote cause, by which the regime of private property itself is introduced, and the proximate cause (by the original fact), by which an ownerless thing enters into the dominion of someone.

The second part will concern the law by which inheritances and testaments are first sanctioned.

To the third we shall assign the boundaries and limits by which that right is circumscribed, from which we shall obtain at once a complete and Christian account of it.

Finally, in connection with the chapter itself, we shall treat a small question much disputed today, concerning the dominion of authors and inventors.

Section I. Concerning the Object and Causes of Private Property

Aristotle, *Politics*, bk. 2, chap. 3; St. Thomas, lectures 5 and 6 on Book II of the *Politics*; II-II, q. 66, art. 2; John Duns Scotus, *In IV Sententiarum* [On Book IV of the Sentences], dist. 15, q. 2; Molina, vol. 2, disp. 18 and 20; Rebellus, *De obligationibus iustitiae, religionis et charitatis* [On the Obligations of Justice, Religion, and Charity], bk. 1, q. 2, sect. 4; Suarez, *De legibus* [On Laws], bk. 2, chaps. 14, 18, 19; Vasquez, *In I-II* [On the First Part of the Second Part], disp. 157; Lessius, *De iustitia* [On Justice], chap. 5, nos. 1-10; Cardinal de Lugo, *De iustitia* [On Justice], disp. 6, sect. 1; Grotius, *De iure belli ac pacis* [On the Law of War and Peace], bk. 2, chap. 2, § 2; chap. 3, § 6; Taparelli, *Saggio teoretico di diritto naturale* [Theoretical Essay on Natural Law], nos. 399-405, 778-788, 1524-1525; Thiers, *De la Propriété* [On Property]; Cathrein, *Moralphilosophie* [Moral Philosophy], part 2, sect. 1, bk. 4, chaps. 3, 4, 5. Cf. his work *Philosophia moralis in usum scholarum* [Moral Philosophy for the Use of Schools], nos. 359-403; Carrière, *De iustitia et iure* [On Justice and Right], nos. 23, 24, 502, 503; Waffelaert, *Exposé sommaire des principes généraux de la science sociale* [Summary Exposition of the General Principles of Social Science]. Cf. his work *De iustitia* [On Justice], vol. 1, nos. 23, 24, 265, 266; Castelein, *Le Socialisme et le Droit de propriété* [Socialism and the Right of Property]; Capart, *La Propriété individuelle et le Collectivisme* [Individual Property and Collectivism]; Antoine, *Cours d'économie sociale* [Course of Social Economics], chap. XVI; Holaind, *Le Socialisme américain, la propriété et le droit naturel* [American Socialism, Property, and Natural Law]; Pottier, *De iure et iustitia* [On Right and

Justice], diss. 1, sect. 2, chaps. 3-8. The works of the adversaries were indicated in the preceding chapter.

Article I. On the Object and Source of the Regime

(Remote Cause of the Right)

§ 1. Notions and Opinions

195. Sketch of the right itself. 1. A complete definition of the right, as the fruit of the whole argumentation, will have to be gathered near the end of this chapter. For the present, we undertake to explain the ordinary account of the right itself, so that we may recognize, at least by its principal notes, the right concerning which the thesis is proposed.

Come then, it is readily evident that this account consists especially in four things:

- a) Some dominion over a thing inferior to us, by which we order its utility to our good;
- b) The right of taking this utility;
- c) A right that is not transitory but stable and permanent, which is preserved by the mere intention of the owner even after he has ceased physically to apprehend the thing;
- d) The right of excluding others from the same use.

For in the first stage of reason, knowing that some thing is apt to serve me, I determine to use it and do use it. Thus far, a mere fact is at issue. But the thing becomes a matter of right as soon as other men must observe and respect this use of mine. Yet we have not yet arrived at the right of property. For, to illustrate this with examples, it would be unlawful for me to prevent others from enjoying the sun or water; I have the right to walk through roads and squares, yet no one will ascribe to me the property of the sun, water, a road, or a square.¹ For what reason? Because an equally inviolable faculty over the same things and for the same use of them belongs to others. But if the utility is such that it cannot benefit several persons without diminution, so that as much as was conceded to the advantage of others would be subtracted from my own, the right of use entails the right of excluding others from the same utility; and those who must respect my faculty of using are by that very fact prohibited from seeking a similar utility for themselves from the same thing. The right then amounts to a privilege designated by the name of property, if it entails a stable subjection or assignment of the thing to one person rather than to others. Cf. what was said at the beginning, nos. 5 and 7.

¹ Only by using a broader acceptation could Molina, disp. 18, Cardinal de Lugo, disp. 6, sect. 1, and others dispute concerning the dominion that would belong to man over the heavenly bodies.

2. Furthermore, this privilege can be exercised regarding any fruits and any utility or aptitude of a thing that cannot actually be destined for many persons. Hence any right of receiving, to the exclusion of others, some utility of a thing is in reality a right of property.

Yet just as we can consider a tree, field, or estate formally insofar as they bear fruits and are sources of utilities, so, in addition to the right (an “exclusive” right or privilege) to the fruits or utility, we conceive a right to the tree, field, or estate itself, whereby, as though in their root and source, we

possess every utility and the fruits, whether present or future. But a right that merely affects the fruits or utility is conceived as negating that radical possession of the fruitful thing. Hence, with respect to the thing itself that is useful or fruitful, there is now distinguished:

a) **Perfect or full dominion** over the thing itself, by which someone can make his own every utility and all the fruits of the thing, and also dispose of the thing itself as its nature permits: destroy or consume it, if it is movable; or, if it is immovable, adapt it to this or that kind of produce or utility: plant the land with trees, sow seed in it, build upon it, etc.

b) **Useful dominion**, which confers a right (wholly or in part) either to the use, or to the fruits, or to both, the substance of the thing nevertheless being preserved. Therefore, it is imperfect with respect to the thing itself. Here, moreover, substance is taken juridically for that form and configuration by which the thing has a determinate utility and designation, by which, for example, it is a meadow rather than a vineyard. The best-known species of useful dominion are usufruct, use, habitation, and an active servitude.

c) **Naked or radical dominion** over the thing itself, the fruits or use of which belong to another. Hence the real rights in which useful dominion consists are now understood as parts torn away from perfect dominion.

3. From what has been said, it is also apparent that things, as they are now considered by us, are either outside commerce and incapable of becoming anyone's property; or ownerless and not yet in the patrimony of anyone; or, finally, the property of some person.

4. Again, the subject that positively possesses things can be the community of men itself, a public society, or some private man.

196. Object of the discussion. Since there is now no one who embraces the position of negative communism, whose excessive foolishness is detected at first sight, and since it is also readily agreed that things can at least be actually consumed by private persons, what must be discussed here chiefly is the stable private dominion of things that have perpetual utility, and especially the possession of immovable things. The difficulty, moreover, arises from the third and fourth notes by which property is distinguished, namely the perpetual right of excluding other men, for whom nevertheless the things seemed equally destined by the Creator of the world. Now, concerning the right thus understood, it is asked:

Whether things, even immovable ones, can or cannot be acquired by private persons with a stable right of dominion;

From what source the division of possessions among private persons flowed.

197. Opinions. 1. Among the ancients there seems to have been no dispute concerning the private possession of things itself, except that some thought a certain community of goods, or an equal distribution among citizens, more consonant with the account of a perfect city that they fashioned merely in thought.

2. The true detractors of proprietary dominion were heretics: both those whom, from the earliest times of the Church, the Fathers knew and refuted under the name of the Apostolics, and others who prepared the way for the innovators of the sixteenth century. Such were Wycliffe, Huss, and the Anabaptists.

What the Holy Fathers themselves thought we shall give in a scholium.

3. The Scholastic Doctors unanimously assert that the condition of the human race is now such that, after men multiplied, a stable division of goods among them was supremely expedient, indeed necessary, for peace and common prosperity.

“That man possess his own things ... is necessary for human life.” St. Thomas, II-II, q. 66, art. 2.

Community of goods would be “contrary to peaceful intercourse ... and to necessary sustenance.” John Duns Scotus, *In IV Sententiarum* [*On Book IV of the Sentences*], dist. 15, q. 2, no. 5.

After the fall and the multiplication of men, the division of things is so necessary that without it “the condition of men could scarcely be preserved.” Molina, *De iustitia* [*On Justice*], tract. 2, disp. 20, no. 5.

The division of things is proved to be “adapted to this state and condition of men” and to pertain to those institutions that were introduced “with necessity demanding them more than the will.” Suarez, *De legibus* [*On Laws*], bk. 2, chap. 14, no. 13, and chap. 19, no. 2.

“Without this [division of fields], it would be most difficult for cities to be rightly governed.” Vasquez, *In I-II* [*On the First Part of the Second Part*], disp. 157, no. 17.

“If possessions had remained common, they would have been left uncultivated.... The world would burn with perpetual contentions and wars.” Lessius, *De iustitia et iure* [*On Justice and Right*], chap. 5, no. 3.

“First of all, it is certain as a fact ... that many things are under the dominion of particular persons. It is likewise certain that this is not only lawful but also expedient, indeed necessary, for human political life.” Cardinal de Lugo, disp. 6, sect. 1.

Therefore, regarding what is principal in this matter, they agree on the lawfulness of this institution, which they hold to be divinely revealed,² and on its perpetuity. Nor do they doubt that, after the division of things has been made, thefts are prohibited by the natural and divine law itself. Thus, for example, Suarez, loc. cit., chap. 14, no. 17; Vasquez, loc. cit., no. 22.

² Lessius, loc. cit., no. 2; Rebellus, loc. cit., no. 20.

But when they inquire into the cause that proximately introduced the division of goods itself, by common agreement, which they judge to be confirmed by canon law, they place this division among the institutions of the law of nations.

Not a few expressly deny that it can be ascribed to divine or natural law. Thus John Duns Scotus, who nevertheless judges this concerning natural law to be merely probable. He is moved by this rationale: the law of nature, which for the state of innocence had rather commanded community, indeed granted, after the fall of Adam, permission “to appropriate and distinguish common things,” but could not itself have introduced a regime contrary to the original one. Therefore, the human decree of him who either governed his family by virtue of paternity or commanded even outsiders by political authority had to intervene. Cf. loc. cit. and also the *Reportata Parisiensia* [*Parisian Report*], on the same distinction, q. 4, nos. 7-12, where he professes the same doctrine.

Molina does not wish to attribute to natural law anything except what always and everywhere appears to reason to be morally necessary, while the necessity of private possessions obtains only for the most part and after the increase of the multitude. Therefore, although the natural law can oblige

the ruler of society to make a division of things, that division nevertheless could not in fact exist “without a tacit or express human statute, even after sin.” Like Scotus, he ascribes an efficacy sufficient for this to paternal or political power, and also to the common consent of men. Cf. loc. cit., disp. 18 and 20.

Rebellus, *De iustitia [On Justice]*, bk. I, q. 2, sect. 4, is of almost the same opinion.

Suarez appears to argue from the fact that “the congruences which show that the division of things is more advantageous in fallen nature do not prove that this division is under a natural precept”; and because nature “conferred the dominion of all things in common and consequently gave to each person the power of using them, but did not confer proprietary dominions in this manner.” Loc. cit., chap. 14, nos. 13 and 16.

Lessius grants that this regime, once its necessity is perceived, can in this respect be said to be of natural law; he nevertheless denies a strict necessity, since individual commonwealths could imitate the city of the Moravian heretics. Loc. cit., no. 10.

Yet for this reason they are not to be counted among those whom we oppose in this thesis; rather, according to their various understandings of the law of nations, they are to be judged to differ either not at all or only slightly from the opinion received today. Cf. in the preceding volume the thesis on the law of nations, and below, no. 207.

Therefore Vasquez is not opposed to us, while we judge John Duns Scotus, most Thomists, Molina, Rebellus, Suarez, and Lessius to be somewhat opposed.

Cardinal de Lugo, however, expressly sets forth the doctrine that is accepted by Catholics today: “The division of things and dominions, speaking generally, is of the law of nature, because natural reason dictates that, in the present circumstances of fallen nature and the multitude of men, division is necessary.” He takes the law of nature “for a law obliging independently of every superadded positive precept.”

He judges that the law of nations, to which others refer the division of things, is not distinct from this law. Moreover, this original community is explained by him thus: nature “introduced men into the world as though into a house filled with resources, so that each might take, and by taking make his own, those things that previously were common to all.” Cf. disp. 6, nos. 5, 6.

But what is to be said of St. Thomas? He attributes the division of possessions to the law of nations. Yet he describes this law by notes that accord entirely with our thesis; for, according to his opinion, institutions of the law of nations: **a)** have force also from the natural law,³ and **b)** “do not require any special institution, but natural reason itself institutes them.”⁴

³ I-II, q. 95, art. 2.

⁴ II-II, q. 57, art. 3, ad 3.

N.B. Not a few distinguish with sufficient subtlety between the division of other things, which they attribute to the law of nations, and the occupation of a movable thing the possession of which is an inconvenience to no one; this they say proceeded from the natural law. Lessius, loc. cit., no. 10, teaches this expressly; Scotus, before him, no. 6, doubted the matter; and in the *Decretum Gratiani [Decree of Gratian]*, dist. 1, chap. 7 (from Isidore), these three things are referred together to natural law: “the common possession of all and one liberty for all, the acquisition of those things which are

taken from the sky, the land, and the sea; likewise, the restitution of a thing deposited or of money entrusted (loaned).”

4. Nor do we think that Hugo Grotius, when he ascribes private possessions to some compact of the human race, requires anything other than that consent which most Scholastics demanded in order that this salutary regime be introduced in fact. For he is content even with a tacit compact; and elsewhere he thus distinguishes between the dominions of those who possess reason and those of infants or the insane: the former proceed from natural law, the latter from the law of nations. Cf. *De iure belli et pacis* [On the Law of War and Peace], bk. 2, chap. 2, § 2, and chap. 3, § 6; cf. also what Rev. Frs. Holaind, op. cit., chap. 3, pp. 59, 65, and Capart, pp. 64-68, write concerning his opinion.

5. An error concerning the origin of civil society persuaded certain philosophers of the eighteenth century, such as Hobbes and J. J. Rousseau, to ascribe to public power such an “absolutism” as would confer upon it every right over goods. Therefore, the rights of private persons would not subsist without the authority of the civil power. And those philosophers, perhaps the first of all,⁵ truly disagree with us. The Kantian school, for which civil law is the source of every right and consequently also of property, is no less opposed to us.

⁵ “Hobbes is, we think, the first who expressly formulated and defended this opinion (that property comes from civil law).” Capart, op. cit., p. 36.

6. In this century, the opinion of Cardinal de Lugo has become common among Catholics. The Supreme Pontiff Leo XIII himself has more than once pronounced judgment on the matter in words that leave no room for doubt: “The Church recognizes as far more fitting and useful inequality among men, who are naturally diverse in bodily and intellectual powers, even in the possession of goods; and she commands that the right of property and dominion, proceeding from nature itself, remain intact and inviolable for each person.”⁶ And more recently, in the Encyclical *Rerum Novarum*:⁷ “To possess things privately as one's own is a right given to man by nature.” He then shows that this applies not only to those things which are consumed by use, but also to those “which remain while we use them,” and to the dominion of the land itself.

⁶ Encyclical *Quod Apostolici*, December 28, 1878, toward the end.

⁷ Near the beginning. In the middle, moreover, he again has these other words: “To possess goods privately, which we saw a little above, is a natural right of man.”

7. In what respect the socialists, both pure and mixed, are hostile to this doctrine of ours is far too evident from the preceding chapter for it to be necessary to inculcate it here again.

§ 2. Formulation and Arguments of the Conclusion

THESIS XIII

By the law of nature itself, this kind of institution is sanctioned: the private ownership of external things, even immovable things.

198. I. **State of the question.** What our intention aims at, and why we discuss specifically the dominion of immovable things, are sufficiently evident from the preceding chapter and the notions just handed down. Therefore, we may immediately turn to explaining the terms.

1. THE TERMS ARE EXPLAINED.

By the law of nature itself, whose solemn definition is: “The participation of the eternal law in the rational creature.”¹ It therefore contains an ordinance commanded by God Himself, the author of nature, and promulgated in our nature itself. Hence it cannot be separated from our nature. Moreover, we say *by the law of nature itself* in order to indicate the force which accrues everywhere to private possessions from positive laws.

¹ St. Thomas, I-II, q. 91, art. 2.

Is sanctioned, that is, it obtains validity and efficacy as soon as it exists; and, with nature as guide and instigator, it has been commonly introduced.

This kind of institution. Kind, I say, because in addition to the generic approval which it has from the law of nature, the manner in which it exists and has force “in the concrete” is not, as Cardinal de Lugo observes, “completely from the natural law alone, but depends at least negatively upon human law; not only because many modes of acquiring, losing, and transferring dominion can be introduced, and in fact have been introduced, by merely human law, but also because those other modes of acquiring dominion which appear to have been introduced by the law of nature still depend at least negatively upon human law, insofar as they could have been impeded by human law, just as in fact ... many are rendered incapable by human law of acquiring dominion.” (Disp. 6, no. 5.)

Which is private property, not merely momentary or precarious, but stable and firm.

Of external things, and not merely of one's own action, reputation, and honor, which, as all admit, are appropriated to individuals by the law of nature itself. The members of the body themselves, moreover, are a part of the possessing person rather than things possessed.

Even immovable things, whether buildings or lands. This does not prevent some things from being withdrawn from the commerce of private persons by positive law and others from being assigned to the treasury itself.

2. NOTE TO THE THESIS. a) That the regime of private property is among lawful things is clearly contained in the Scriptures, so that it must be held with Catholic faith.

b) He would incur the censure of temerity who ascribed a civil origin to this regime, or denied that, with respect to external things, any right of private property arises from nature itself. For he would openly conflict with the doctrine which the Supreme Pontiff declared to be the doctrine of the Church.

c) We would not, however, judge anyone *per se* worthy of censure who simply adhered to the doctrine of the Scholastics, except that he would act somewhat imprudently by employing terms which today supply an occasion for abuses. And in truth, the Scholastics themselves would entirely assent to this formula by which the Supreme Pontiff concludes his discussion concerning the division of things, especially immovable things, and pronounces his judgment: “Rightly, therefore, the whole human race, hardly moved at all by the dissenting opinions of a few and attentively contemplating nature, found in the law of nature itself the foundation of the partition of goods, and consecrated private possessions by the usage of all ages, as being most consonant with human nature and with peaceful and tranquil common life.”²

² Encyclical *Rerum Novarum*, in the first part.

The formula of the thesis itself, moreover, is such that it does not decide the question concerning the consent which is required negatively or positively as a mere condition for introducing the regime of the division of possessions. Cf. the Scholium, no. 207.

II. Proof.

199. A. OF THE FIRST PART: By the law of nature itself, this kind of institution is sanctioned *per se*: the private property of external things.

Argument 1. From the end of external things.

The argument can now be set forth precisely in this manner: Nature sanctions that regime of goods by which alone the end for which they were created is well attained. **But.** Such is the regime by which at least many goods are possessed as their own by private persons. For above we showed that both kinds of communism are repugnant, namely, negative and positive communism. **Therefore.**

Yet, to speak more explicitly, our argumentation proceeds in this manner:

Nature sanctions that kind of institution concerning external things which, upon easy consideration, appears necessary to all in order that external things may be fittingly adapted to the end for which they are destined by the Author of nature.

But. Such is, *per se*, the private property of external things.

Therefore. By the law of nature itself, therefore, this is sanctioned *per se*.

To the major. On the one hand, the willing of the end demonstrates in the Author of nature the willing of the means which alone is suitable; on the other, the common evidence of the necessary connection between the means and the end, concerning which men readily agree, brings it about that this means is commonly received and observed even before human law has exercised its force and efficacy. But this indicates a natural institution. For, as we say in Volume I, where we treat Laws and the Law of Nations, true causality is to be acknowledged in human ordinances for this reason: in obscure matters, or those which permit a choice among several things, the consent and agreement of the citizens would not be obtained unless the prince, by his choice, imposed a necessary rule upon his subjects. Cf. St. Thomas, I-II, q. 91, art. 3, ad 1.

To the minor. These things are clearly apparent to anyone who gives even a little thought to them:

a) The external things of this world were created for the human race, as aids for its manifold need and as instruments of every advancement.

b) Most things, however, were not so granted to men that, of their own accord and at men's command, they are present in the abundance required and in the form in which they are immediately useful. Fields, although fertile, will not be fruitful without cultivation. And the fruits themselves which are produced are generally unsuited to our uses unless they are transported by our industry and assume suitable forms. No small amount of labor must be expended, not only upon inanimate things, but also in feeding cattle and subduing wild beasts. Therefore, most external things cannot be left, as it were, to themselves, but care must be expended upon them which is diligent, constant, and orderly. That is, in order that many things may be disposed in a manner consonant with the end intended by the Author of nature, they must enter into the lasting possession of men.

c) This possession can thus far be conceived as common or private. But if it is undertaken as common, men for the most part will be neither industrious in caring for things nor orderly; nor will they long associate peacefully with one another.³

³ St. Thomas already proposed the same thing elegantly, II-II, q. 66, art. 2, in these words: "It is lawful that man possess his own things. And this is also necessary for human life for three reasons. First, because each person is more solicitous in procuring something which belongs to himself alone than something which is common to all or to many; for each person, avoiding labor, leaves to another what pertains to the common good, as happens with a multitude of servants. Secondly, because human affairs are conducted in a more orderly manner if to each person falls the proper care of procuring some thing. But there would be confusion if anyone indiscriminately took care of anything whatsoever. Thirdly, because by this a more peaceful condition of men is preserved, while each person is content with his own thing. Hence we see that quarrels arise more frequently among those who possess something in common and undividedly."

This is taught both by human behavior, which, if you attend to it even a little, you will see to be of itself very much inclined toward idleness, self-love, and envy; and by continual experience, which shows that common things are generally neglected in comparison with private things, unless perhaps a private advantage can be hoped for from the very care of common things. Finally, the sharing of goods with strangers, unless it appears necessary for some special end and for a short time, is little sought by men and contains the seeds of perpetual dissensions, quarrels, and enmities.

These things, I say, are immediately proved to cohere with community of goods taken generically.

But if you look to that form of community which the adversaries proclaim, all the arguments made in the preceding thesis against present-day collectivism recur.

The truth of the assumed minor also now becomes sufficiently manifest from the universal fact that men, led by common sense, as soon as they began to multiply and to apply themselves to the arts, at the same time had possessions divided among themselves. This rationale becomes all the more urgent because, as St. Thomas most excellently observes,⁴ "it is to be judged that, throughout the length of preceding times, nearly everything concerning human intercourse which can be devised has been discovered."

⁴ *In II Politicorum*, lect. 5.

Argument 2. From the nature of men, both personal and social.

It is repugnant that nature should not have sanctioned this kind of institution: **a)** toward entering which man is borne by the strongest propensities of his personal and domestic life; **b)** which alone accommodates these propensities to the requirements of political society. **But.** Such is the private property of external things. **Therefore.**

The major is evident, because nature, which made man a rational, domestic, and political animal, would have conflicted with itself if it had of itself denied him the means by which he could satisfy the first two characteristics of his substance and by which the three characteristics could be in harmony with one another.

The minor is proved in parts.

a) Concerning the propensities themselves.

α) The propensity of a man who has reached maturity to govern himself by his own judgment, and consequently to provide by himself for his necessities and desires, is very great. By reason, moreover, he is conscious that the necessities by which he is pressed are by no means allayed by a momentary use of things, but constantly recur and, as Leo XIII says, return perpetually, even after he has been rendered by old age or infirmity unequal to labor. By reason he also foresees various advancements, not only those which pertain to temporal utilities or the conveniences of bodily or present life, but also those which concern the nobler pursuits of letters, the fine arts, and virtue. But security for the future, a greater enjoyment of life, and leisure for nobler pursuits - unless he wishes to depend upon another's judgment for all these things - from what source will they be available to him except from stable and private property in external things? Therefore, by the same propensity by which he is impelled to pursue those things, he is impelled to acquire this property for himself.

If, as generally happens, complying with his natural inclination, he has by marriage begun a domestic society, the one who is the head of the family will experience in himself at one and the same time both the authority and the will to govern his own in a manner similar to that by which he governs himself. Again, in the possession of external things he recognizes the one means adapted today for extending a provident care which reaches to his offspring and passes beyond the limits of his present life.

β) No less vehement is the inclination in man to claim as his own the fruit of his labor. Indeed, this persuasion rests upon truth, by which all judge that the work belongs to him whose labor it was. But nature has so disposed things that no labor would be fruitful unless it were applied to some external thing, with which it would thereafter become one indivisible body.

Come then, if the wood from which you have fashioned a hammer or a plow belonged to no one, or the land which you have converted into a field or a meadow, or, universally, the matter which you have permanently clothed with your operation, to whom, I ask, will that whole composite of an external thing and your personal operation belong? Will men not, under nature's prompting, assign to you the hammer or plow itself, and the field itself - at least as long as it remains clothed with your labor - since, with the intention of enjoying the thing, you applied time and diligence to it? By this other path, therefore, perhaps a shorter one, man is led, as though by the hand of nature, to the opinion of private property.

What of the fact that the very pleasure which men are accustomed from childhood to take in the property of external things reveals no slight propensity or instinct of nature?

b) Through private property, these propensities are accommodated to the requirements of political society. And indeed:

α) Political society requires a head who commands and is furnished with suitable power. At the same time, however, as human ambition now is, there is a very great danger that rulers will exceed the measure and render the citizens excessively subject to themselves. Remove private property in things, in which - as history bears witness - the greatest force for resisting tyrannical attempts is situated; also hand over the goods themselves to the rulers of the community to be governed: from what source are the citizens to seek a protection for themselves in defending personal liberty?

β) Political society requires that citizens apply themselves to the most varied arts; that there be some who have at the same time rendered themselves capable and are able to free themselves from

occupation in order to devote themselves to the commonwealth. These things are supplied of their own accord by the regime of private possessions, by which citizens, with necessity itself or their own advantage compelling them, are moved to cultivate every kind of art and differ among themselves no less in knowledge and prudence than in fortunes. By the same regime it is brought about that they can promise themselves from their diligence such a fruit as may incite them not to refuse the burden of certain offices. Remove private property in things: it will scarcely be possible for citizens to be assigned to fixed dwellings and arts otherwise than by public force, or for some to enjoy that leisure and devote themselves to those studies by which they prepare themselves for discharging offices at some future time, otherwise than by public decree. Therefore, the propensities described above will once more be done away with.

Add to these things that, by the things which they privately possess, citizens are especially incited to will that the commonwealth be safe and prosperous; and that by reciprocal exchanges, partnerships, and agreements which are made concerning private things, men are joined to one another by so many bonds, as it were. How greatly these things contribute to the common good can be hidden from no one.

N.B. The force of this argument appears more clearly if you recall the things proposed at greater length in the refutation of socialism. Concerning the same reasoning, both the Encyclical *Rerum Novarum* and the cited work of Rev. Fr. Holaind, who from chap. 4 onward is excellently occupied in explaining it, may profitably be consulted.

Nor should you say, in order to weaken the reasoning made:

- 1) That it proves too much, and consequently proves nothing, since it would follow that access to private possessions would have to be open to all men; for there is no one who is without the propensities from which the reasoning was drawn;
- 2) That the Catholics themselves are persuaded of this, since religious who live a common life make sufficient provision for their needs and better than others provide for their advancement and the higher arts. Therefore, all these things can be had more easily and happily by the common possession of goods.

Do not say these things, I repeat. For:

- 1) As regards the former doubt: from the fact that all possess propensities of this kind which demand private property in things, it is perhaps not without reason inferred that, *per se*, an opportunity is provided by nature to each person to obtain that property which is sufficient to satisfy these propensities in some suitable manner; and that a society employs a less correct regime of goods where this opportunity seems *per se* to be lacking to most persons. Yet *per accidens* that faculty can be lacking, just as other faculties, such as that of marriage, which correspond to a natural propensity. Nor is it required that it be present equally perfectly in all. For nature itself made men of varied talents and powers. Nevertheless, whatever relation the system of private property which flourishes in a given place may bear to the perfect intention of nature, property, even if imperfect, will still be sanctioned by nature insofar as by it the innate propensities are certainly satisfied in some manner. In truth, however, if we now turn to the actual fact, all men who in some part govern themselves and their own by their own judgment, and have a choice of place or condition, must ascribe this to stable property, so that to deprive someone of this right is equivalent to reducing him to servitude. Nor,

once servitude strictly so called has been abolished, is any person *per se* without at least an opportunity of possessing more. Furthermore, merely by the hope of better fortune the industry of men is nourished and those pursuits which contribute greatly to the advancement of civilized culture are fostered. External things, under the regime which we employ, might be said to be placed, as it were, in the midst, so that no one who strives is *per se* denied some share; but abundance is obtained by those who, in a most useful contest, have more successfully reached the goal.

2) As regards religious communities, they do nothing to impair the evidence of the conclusion. For the rationale by which they themselves are constituted, and the selection by which members are enrolled, are such that individuals can entirely trust in common care and providence. These persons, moreover, led by a higher motive, renounce liberty and marriage for themselves, so that, greatly subject to a Prelate, they lead a life of a simple and humble tenor which can belong to very few.

If, in addition, any groups are mentioned in which community of goods appears to flourish, the same simplicity of life occurs, and at the same time, generally - not to say always - a religious cause which joins the members more closely to one another.

Only then would the adversaries accomplish anything if they could set before us an example of a merely civil society in which the arts and civilized culture flourished without a division of possessions.

200. B. OF THE OTHER PART: By the law of nature itself is sanctioned ... the private property of external things, even immovable things.

This part is easily established by the following:

1) Immovable things exhibit the character by which they are to be assigned to the class of things subjected to private dominion. For nature grants dominion of those things which are **a)** distinct from the human person, **b)** useful to man, **c)** finite in abundance, and **d)** such that, unless they are consumed by use, they can be stably marked by man or their possessor, as though by a sign. Cf. Rev. Fr. Holaind, chap. 7, at the beginning. For **a)** the object of a right is never a person, as we saw in no. 7; **b)** and **c)** property in useless things or things of infinite quantity would lack a just cause; **d)** unless a thing appears by a stable bond to be assigned to the service of someone, the privilege of property collapses from its foundation, nor can the right become known *per se* to other men, which is nevertheless required in order that they be bound by the duty of observing it. But if these four things are present, the utility and rationale of property will be present at the same time.

Now it is evident that lands are distinguished by these endowments. For, to pass over the first three, which are known to the eyes of all, as regards the fourth quality, lands retain the trace of their owners more than other things do. "For a field subdued by the hand and skill of the cultivator greatly changes its condition: from wild it becomes fruitful, and from barren, productive." Encyclical *Rerum Novarum*.

2) Private possessions of immovable things have special advantages of a public character. Cf. what was said in no. 182, B.4.

3) The public seizure of immovable goods would benefit no one and would create the greatest danger for society: that the power of those who command would pass into the worst tyranny; that the officials occupied in that immense administration would indulge without restraint in their desires,

perverse favoritism, and embezzlement; and that the citizens would be far less devoted to the commonwealth and to peaceful arts.

201. III. Difficulties, after the arguments made and the refutation of collectivism, are neither numerous nor do they occasion any trouble, so that it is enough to present a few which attack the first part of the thesis.

1. FROM THE NATURAL COMMUNITY OF THINGS. For:

a) Private property attributes to one person what nature did not make for one person. **Therefore.** It is not from nature.

Reply. I divide the antecedent. Private property attributes to one person: **I distinguish this part.** Private property, that is, the act of the lawful faculty of appropriating things to oneself, **C.**; that is, the faculty itself or the regime of private property, **I subdistinguish.** It attributes proximately to one person, **N.**; remotely, **C.** Nature did not make it for one person, **I distinguish:** proximately, **C.**; remotely, in the present state, **N.** **I distinguish the consequent likewise. Therefore.** Private property, understood as the act of appropriation, is not from nature, **C.** or **I pass over;** the faculty itself, or the regime, is not from nature, **N.**

What we say is sanctioned by nature is the regime itself of private property, once it has been introduced, and this under the common rationale by which it universally permits divided possession to private persons. Yet by this no one already possesses anything; a positive, human fact is required in addition, by which a thing enters into the dominion of someone. That fact, at least if you take the original fact of occupation, appears to some to be a mere condition, so that they derive the property of the occupied thing itself from hypothetical natural law. Others, whom we judge to speak better, attribute true causality to that fact. But because the present thesis concerned merely the regime itself, we conceded or passed over that the act of appropriation is not from nature alone.

Instance. Nature did not even remotely make for one person that which the regime of private property attributes to one person. For it destined external things to the whole human race.

Reply. I deny the exception made. As regards the rationale added, besides the fact that it would attack the common possessions of one nation no less than the private possessions of one private person, **I distinguish it thus:** It destined things to the human race in order that they be possessed by it as the subject of dominion, **I deny;** in order that they redound to its good and utility, **I subdistinguish.** If you take things and the human race collectively, **C.**; if you take things and men distributively, **I subdistinguish again.** If you take things and men together, or things alone, **I deny;** if men alone, **I subdistinguish.** In some manner, **C.**; equally, **I deny.**

The end to which these distinctions tend is readily apparent. Since all things were made for man - not so much for this or that man as for the human race - the manifest intention of nature is that external things universally be useful to men taken generically; therefore, we conceded the proposition concerning things and the human race taken collectively. Yet nature did not thereby establish that each and every thing must serve each and every man, or that the human race must receive utility from each individual thing; hence we denied that either things and men together, or things alone, can be taken distributively. Finally, as regards men themselves, there is no one who, according to the command of nature, ought not to come into some share of external things. Yet nature, which

introduced the causes of inequality, by no means apportioned the same share to individuals. Under this rationale, therefore, we granted that men be taken distributively. But from this destination it is in no way brought about that things must be possessed in common, since, as we have shown, the very division of things is necessary in order that this end be well secured. Indeed, the very things which are the property of one person nevertheless customarily benefit many.

b) It is a solemn maxim of the Holy Fathers and of canon law that by nature all things are common.

Reply. I distinguish. By nature in its integrity, **I pass over.** By nature as it exists after the fall of Adam, **I subdistinguish.** All things are common negatively, on account of the common faculty granted for legitimately acquiring things, **C.**; all things are common positively, as regards the right of disposing of them, **N.**; as regards use, under the rationale just explained, **C.** Cf. the Scholia concerning negative community and the opinion of the Fathers.

2. FROM THE FACULTY OF RENOUNCING THIS RIGHT. Hence it is argued thus:

With a regime of private property which is from nature there cannot stand: **a)** the faculty which private persons possess of renouncing the right of possessing goods; **b)** the valid establishment of common property in certain societies.

Reply to a). **I deny**, since many divest themselves of the very right of marrying.

The rationale for this is that something is commanded or instituted by nature only insofar as the dictate of right reason demands this command or institution. Hence, if right reason merely demands that some right be present *per se* in man, in such a way that in certain circumstances the necessity or opportuneness of that right itself can vanish, it will be lawful for the man who is situated in these circumstances to divest himself even of a natural right. Now, from the arguments presented, only these things are concluded: **a)** that the regime of private property is today commonly necessary in a society of many men; **b)** that the right of legitimately acquiring goods is innate in each person. But since, in certain circumstances, such as those which surround religious, provision can be made for the preservation and perfection of man otherwise than through stable property, nothing prevents religious from casting aside that right.

Observe, however, that it is by no means established that, without the authority of law, someone can so renounce the faculty of acquiring goods that, if he afterward attempted to possess them, his possession would not even be valid. Indeed, the opinion which denies that this is within the power of private persons is to be preferred.

To b), I distinguish. With the natural regime of private property there cannot stand the introduction of common property or of a contrary regime in societies in which, on account of special circumstances, division is not necessary, **I deny**; for the regime itself is natural only for those societies in which the necessity of private property is evident to all.⁵ In the societies concerning which the thesis was proposed, **I pass over.** No society of this kind has existed or will exist for long. We nevertheless reserve the question concerning validity for a Scholium.

⁵ Cf. no. 199, Argument 1.

3. FROM THE EVILS AND ABUSES WHICH PRIVATE POSSESSIONS BRING WITH THEM.

Reply. The evils arise *per accidens* and are less than they would be if the contrary regime were introduced.

§ 3. Supplements to the Doctrine

I. COROLLARIES

202. Private property is prior in fact to civil union. Even if private property had taken its beginning with civil society, it would nevertheless be confirmed by the law of nature itself, as are not a few other things which necessarily follow the public association of men. Yet matters do not stand thus. In a city already possessing a certain civilization, perhaps the complete regime of private property is first seen, because at that time the frequency of men and needs generally demands a more complete ordering of things. Yet the arguments we have given make it manifest that already in smaller groups or associations, indeed not infrequently in one family, in order to preserve peace and concord it was necessary that each begin to have his own things stably.

Do we not, even today, although households or domestic societies generally consist of few persons, see that things do not remain perfectly common even among brothers? It is therefore to be thought that it came about in practice that, the more strongly the rationales favoring private property prevailed as the multitude increased, the more the regime of property itself was at the same time perfected, gradually and imperceptibly, and without a formal deliberation or decree of men. This occurred in two ways: with respect to the object, so that movable things were possessed first, and then immovable things, the possession of which could for a time have been less permanent - as if the settlements of the tribe itself were less fixed;¹ and with respect to the right itself, or the possession itself, which in the beginning was less “exclusive.”

¹ Thus Tacitus said that the Germans changed their fields each year.

203. What belongs to natural law and to human law. In sanctioning some regime of private property, nature and positive law flow together, as it were, into one. Yet it is not so evident what must be attributed to each, what is common to both, and what is proper to human ordinance. For whatever manifestly appears necessary to human association, all of this pertains to the order of reason which, at the command of nature, already obtains among men. But the transition from those things which are manifestly required in order that the arts of peace, etc., may flourish, to those things which are left to the judgment of men to define, is by no means abrupt; rather, many degrees intervene between necessary and indifferent things. Therefore, only this can be said universally: the more some part of the regime appears to cohere with the common good, the more evident it is that it has arisen from nature.

204. Under what rationale the generic institution of private property is of natural law. The arguments prove that some division of goods is altogether necessary now for the peaceful association of men and their advancement. Therefore, by the same impulse of nature, men are drawn to civil association and to the partition of goods; and private property is as natural as civil society.

Yet private property does not flow from nature in the same manner as certain other institutions. Marriage, for example, is a natural precept in every state of the human race; nor is any other marital union permitted except one which is rendered inviolable by the conjugal covenant. But if men wished

to possess goods in common, they would by no means be prohibited from using those goods. Cf. also no. 207.

II. SCHOLIA

205. Concerning the possession of external things before sin. The Scholastic Doctors agree that the rationales why nature now demands that private property be joined to the condition of the human race as it is after sin are such that they judge it would instead have come about that, if Adam had not sinned, things would have remained common. Indeed, there were some who asserted a certain precept of nature concerning the preservation of community, either properly so called - thus Alexander of Hales and Conrad - or understood more broadly, which appears to have pleased John Duns Scotus, loc. cit., no. 5; this precept would have been abrogated after the fall of Adam. Yet such a precept is more rightly denied by most. Cf. Suarez, *De legibus* [*On Laws*], bk. 2, chap. 14, no. 13; Lessius, chap. 5, no. 4.

As regards us, insofar as one may conjecture anything concerning a state so little known to us, we think it must be said thus:

a) Because, by reason of the preternatural gifts, both the necessity and the abuses of private property would have been absent, nature would have pronounced nothing concerning the regime of goods; and it would have pertained to human law to define, according to the circumstances, whether goods were to be possessed separately or conjointly.

b) Yet this community, if any had been pleasing, cannot be understood in that manner which would produce the greatest confusion. Therefore, of the three rationales according to which, in Aristotle's opinion, goods can be conceived to be common among men,² we consider more probable the one by which estates and fields are held separately, but everyone is given the faculty of using the fruits reasonably.

² *Politics*, bk. 2, chap. 3. The other two tend to this: that either the fields alone, or the fields and fruits together, be made common.

206. Less effective arguments. 1) While the ancients thought thus concerning the state of integral nature, they at the same time tacitly refuted this rationale for demonstrating the right of property which certain modern writers have employed. It is of this kind: Man knows by reason that he is superior to external things, and that they are ordered to his good. On the other hand, dominion over any thing is conferred by nature itself upon no one, not even upon society. Therefore, he who takes for himself some thing which was in the patrimony of no one does injury to no one and uses the thing according to its natural end. Hence nature itself has rendered this use, that is, appropriation, lawful and inviolable.

This manner of speaking, I say, does not accord with the opinion of the ancients. For it would follow that private property was a natural right even before the fall.

Moreover, it is shown to be ineffective *per se*. For the right at issue is not the mere faculty by which goods are granted to men for use - "which is, as the Supreme Pontiff says, common to all living things" - but permanent dominion, which contains the faculty of excluding others from the use of a thing which does not actually serve the owner. Now, from the dominion over earthly goods which nature granted to man, perhaps the momentary dominion of the user can be inferred; but how from

this alone you can establish the perpetual exclusion of others, to whom the earth was equally given for use and enjoyment, is by no means apparent. Perhaps you have found gold; you have begun to cultivate a field. Another person appears: "I now need that gold, which you will use only much later; after you have harvested, I too wish, in my turn, to sow the field, and I am prepared to reimburse your expenses." By what right, I ask, will you object to the natural dominion which he has in common with you?

2) The argument which others bring forward from the needs to which the human person is subject limps in like manner.

Therefore, the complete regime of private property is effectively shown to pertain to natural law only after you have demonstrated the disadvantages of common possession. Therefore, communism must be refuted before you establish private property. Cf. Cathrein, *Moralphilosophie* [*Moral Philosophy*], vol. 2, sect. 1, bk. 4, chap. 4, art. 3, § 1, no. 1, and § 2, no. 1 (pp. 290 and 292, 3rd ed.).

207. Whether a human agreement is required as a condition. But beyond this it is asked whether the division of goods is now so much of natural law that no consent or agreement of men is required, not even as a condition; or whether, on the contrary, the positive dissent of the greater part can validly impede the private appropriation of things.

In this matter it seems that we must employ a distinction. For the private appropriation of several things, such as those movable things which are assigned to the use of the person or household, appears so necessary that the peaceful association of men cannot subsist without it. To make these things one's own is granted by nature *per se* to every man in such a manner that either a tyrant or popular assemblies would attempt in vain to impose a contrary regime upon resisting citizens. Yet there are other things whose private property does not thus cohere with the essence of civil order. It is not altogether repugnant, for example, that the soil be possessed by the commonwealth itself. What, therefore, if, without injury to a right already acquired, some city wishes to employ laws by which nothing except an imperfect possession of fields is permitted to private persons? Although we plainly disapprove of that regime and judge that it should be changed, nevertheless, as long as it has force, we judge that private persons must accommodate themselves to such an ordinance. For the private property of a few persons does not greatly benefit the common good; their rebellious protest would instead harm this good. But the division of goods is not sanctioned by nature itself except insofar as it is evidently joined to the common good of men.

With these things said, to conclude precisely: as regards certain kinds of things, we ascribe the institution of private property to a more absolute natural law; but the divisions of other things, especially immovable things, we attribute rather to the law of nations, which, as we explained in the preceding volume, has such a foundation in nature that, unless men dissent, it receives its force and strength from nature itself. Our manner of speaking appears to be strongly confirmed by the Encyclicals of the Supreme Pontiff, in which, on the one hand, it is taught simply that "to possess things privately as one's own is a right given to man by nature";³ while, on the other hand, concerning the possession of fields a more qualified formula is offered, which we praised in no. 198.2.c. Nor perhaps did Vasquez intend anything else when he assigned the division of fields to the law of nations understood as secondary natural law, which permits rather than commands or forbids that it be done otherwise. Cf. Vasquez, *In I-II* [*On the First Part of the Second Part*], disp. 157, no. 17.

³ Encyclical *Quod Apostolici*.

208. What sort of community of things exists by nature. After the things said and disputed, it seems that the whole matter can be accurately explained in this manner, if you say that things were made common by nature:

a) Because God “assigned no part of the earth to any person to possess.” (Encyclical *Rerum Novarum*, first part.) This is called negative community, in which nevertheless the whole rationale of original community is not contained. For external things are also common:

b) Because God destined the earth to the common utility of all, and thus conferred upon each person some power of using it. Hence comes the right of taking in extreme necessity; hence the duty of the richer to give readily from their own goods to the needy,⁴ and thus, as regards use, to consider things as common.

⁴ Encyclical *Rerum Novarum*; St. Thomas, II-II, q. 66, art. 2.

c) Because He conferred upon the community of men jurisdiction to order the regime of external goods in that manner which would accord with the commands or wishes of nature and would appear to be advantageous to the commonwealth. “Men,” says Rebellus,⁵ “were able to establish concerning things what appeared more expedient.” Nor without such jurisdiction you would explain the sayings of the Fathers and Scholastics, or the solution handed down in the preceding number.

⁵ Op. cit., part 1, q. 2, no. 22. Cf. Suarez, *De legibus [On Laws]*, bk. 2, chap. 14, nos. 16-18.

It follows further from this that some positive dominion over things must be recognized “in the community of men, so long, however, as they have not been legitimately taken into possession by some private person”;⁶ it also follows that, besides the occupation by which some thing passes to a private man, there is an occupation by which a city obtains the power of jurisdiction over its own territory. That power is designated by the name eminent domain (*altum dominium*). Cf. below, sect. 3, *On the Limits of the Right of Property*.

⁶ C. de Lugo, disp. 8, no. 6. Hence Suarez, loc. cit., no. 16, says that nature does not confer private ownership in the same manner as it “conferred dominion over all things in common”; and he himself, no. 17, understands the community of things to be of natural law negatively, because “nature did not command that things should always be common.”

209. But if, finally, you should ask whether or not, once appropriation has taken place, an external thing is said to be mine in the same way that the powers and operations of my body are mine, we think this must be denied. For neither physically, or in fact, does the apprehension or detention of the thing continually remain, as my members adhere to me; nor can the intention of nature, by which that thing belonged to the common patrimony of the human race, ever be disregarded, whereas from the beginning the powers and faculties of body and soul were ordered to my good. Therefore, the inviolable faculty of the person does not regard the latter and the former in altogether the same way (cf. nos. 5 and 7).

210. You will ask about the passages of the Holy Fathers which the enemies of property are accustomed to bring forward in their favor.⁷ For we spoke above, no. 183.1, about the statements of the New Testament.

⁷ On this question one may profitably consult Rev. Fr. Cathrein, *Moralphilosophie [Moral Philosophy]*, vol. 2, sect. 1, bk. 4, chap. 4, art. 3, § 5 (p. 312, 3rd ed.); Rev. Fr. Capart, op. cit., pp. 485-501; Rev. D. de Gryse, *Revue sociale catholique*

Reply. 1. First of all, let the adversaries observe that, by putting forward passages of this kind, they accomplish nothing until they have established that, according to the judgment of the Fathers, private possessions are condemned as unjust, or at least that some positive form of communism is sanctioned by law.

But so far are they from being able to prove this that even those Fathers from whom they are accustomed to draw their arguments openly oppose them instead.

Thus, among the Greek Fathers, St. Basil, in his homily on the words of Luke, “I will pull down, etc.,” no. 7, openly acknowledges that goods have been received from God, and indeed unequally: “Is God unjust,” he says, “who distributes to us the necessities of life unequally? Why, when you are rich, is that man poor? Is it not surely so that you may receive the reward of kindness and faithful stewardship, and that he may be endowed with the great rewards of patience?” (Migne, P.G., vol. 31, col. 275.)

St. John Chrysostom, in Homily 2 *To the People of Antioch*, no. 5, inquires why the Apostle did not say, “Command the rich of this present age not to be rich; command them to become poor; command them to empty out what they possess”; and, after the first reason which he gives, he adds this second: “Besides, he knows that riches are not forbidden, if anyone should use them for necessity. For, as I have said: wine is not an evil thing, but drunkenness is evil; so riches are not an evil thing, but avarice is evil, covetousness is evil.... For even to that rich man who approached Him and spoke about life, He (Christ) did not say: Go, sell all that you have; but, passing this over, He instructed him concerning other commandments. Then, after the man invited Him, saying: What yet is lacking to me? not even then did He say simply: Sell all that you have; but: If you wish to be perfect, sell what you have. I place this within your choice; I make you master of the election; I do not draw you into necessity.” (Migne, P.G., vol. 49, cols. 39-40.)

Among the Latin Fathers, St. Ambrose, *On Naboth the Israelite*, chap. 16, no. 67, professes that riches have been received from God, saying: “From Him you received what you offer; His is what you pay to Him. My gifts, He says, and My things given—that is, the gifts which you offer to Me—are My things given; I gave and granted them to you.” (Migne, P.L., vol. 14, col. 753.)

St. Augustine sufficiently discloses his mind in the book *On Heresies*, where he condemns the heresy of the Apostolics. (Cf. no. 180.3.) No less clear are these few words taken from Sermon 113: “From just labors make alms; give from that which you rightly possess.”

Finally, when St. Jerome comments upon Ezekiel, chap. 46, v. 16 ff., and explains the regime by which parents were bound to leave intact to their sons the possession received from their ancestors, what does he tacitly acknowledge if not private property? (Migne, P.L., vol. 25, col. 463.)

2. Similar expressions are found even among preachers of a more recent age—for example, among those who flourished in France in the seventeenth century—although there is no one who has dared to assign them to any class of socialists. “The poor will rise up against you to demand an account of their squandered income. You have alienated the fund upon which divine Providence had assigned them their livelihood; that fund was your surplus.... You have killed those whom you did not assist.” Thus Bossuet himself.⁸ And, even in our own age, the mind of the Holy Fathers who spoke more severely seems to breathe in the writings of Ketteler, Bishop of Mainz.⁹

⁸ *Sermon sur nos dispositions à l'égard des nécessités de la vie* [*Sermon on Our Dispositions toward the Necessities of Life*] (Fourth Sunday of Lent, part 2).

⁹ Cf. *Œuvres choisies* [*Selected Works*], edited by Decurtins.

Nor must this be passed over: those Fathers whose sayings present some appearance of difficulty¹⁰ belong to the same age; that is, they wrote, whether in the East or in the West, from after the middle of the fourth century until the twentieth or thirtieth year of the fifth century. For they are St. Basil (331-379) and his contemporary, St. Gregory of Nyssa; St. John Chrysostom (347-407); St. Ambrose (340-397); St. Jerome (340?-420); and St. Augustine (354-430). This fact is a clear indication to us that these holy Doctors had, from the circumstances of their own age rather than from the doctrine of Christ taken in itself, the reason why they assailed the rich and, with all the force of their words, impressed upon the minds of their hearers the evangelical lesson of brotherly charity.

¹⁰ We add this because St. Gregory the Great occasions no difficulty; nor can any passage of his be brought forward against us with any greater seriousness than the words of pseudo-Clement which are imprudently alleged by de Laveleye, *Le Socialisme contemporain* [*Contemporary Socialism*], p. xvii.

4. Now to explain briefly what their arguments generally regard in reality: they do not think in the least of any order in which private possessions would vanish or be reduced to equality; but, moved by the harsh avarice and tenacity of the wealthy, and sometimes also by great calamity,¹¹ they set before those rich men—who were striving to enlarge their fortunes by right and wrong and were refusing assistance to the poor—the grave duty by which they are bound to aid the needy. To this end they appeal especially to the manifest intention of God, from whom, as supreme Lord, the rich have received their goods, and to the common destination of goods to the utility of men, by reason of which external things never become the property of anyone from nature alone, nor ever perfectly and absolutely. At times, comparing their own age with the customs of the first Christians, they are affected with a desire for that most blessed charity by which the multitude had one heart and one soul, not without prayers that a more perfect virtue of the faithful might restore those golden times of the Church.

¹¹ Thus St. Basil in a homily delivered during a time of famine and drought.

Moreover, the rich men whom they attack are chiefly moneyed men, whose wealth, especially at that time, had an ill repute, being often of little-trusted origin and the offspring or source of unjust usury and of very many vices. Thus, for example, in St. Ambrose's *On Naboth the Israelite*, the word *money* recurs continually; while St. Chrysostom, when the fortunes of Abraham and Job were objected to him, replied: "Their riches were not gold or silver or buildings, but cattle alone." (*On the First Epistle to Timothy*, chap. 4, Homily 12; Migne, P.G., vol. 62, col. 562.) We shall make this mind of the Holy Fathers, as we have explained it, manifest to readers if we place before their eyes the principal passages employed in this matter. It therefore remains for us to weigh them.

1) They bring forward, as though it were from St. Clement of Rome, the passage in Gratian's *Decree*, canon 2, C. XII, q. 1: "For the common use of all things which are in this world ought to have belonged to all men. But through iniquity one man said that this was his, and another that that was his, and thus a division was made among mortals."

Now: a) Considered in itself, this passage was taken from the pseudo-Isidorian collection, where it is found in the last of five decretal epistles which that forger assigns to St. Clement. Those spurious

letters were composed from older documents, especially from those which are customarily called the Clementines (*Klēmentina*).¹² In fact, the words concerning the community of goods are read in the tenth book of the *Recognitions*—a work by an unknown writer of the third century—but there they are placed in the mouth of a certain old pagan man who is asking about the truth. Hence he immediately adds: “Among all things, however, which ought to be common among friends, wives also are without doubt included.”¹³ (Migne, P.G., vol. 1, cols. 506 and 1422.)

¹² Cf., for example, Bardenhewer, *Patrologie* [*Patrology*], pp. 44-46 (1st ed.) or 73-75 (2nd ed.).

¹³ That passage, omitted by pseudo-Isidore, nevertheless erroneously made its way into the body of canon law, whence it was expunged by the Roman correctors.

b) In Gratian's *Decree*, this canon commends common life to clerics. The words mentioned, however, have long been understood to signify that private possessions followed from original sin, without which, according to the wish or precept of nature, the use of things would have been common.

2. St. Basil:¹⁴ a) The homily on the words of Luke, “I will pull down, etc.,” has these words in no. 7: “‘Why,’ says the rich man, ‘do I inflict injury while retaining and preserving my own things?’ Tell me, what things are yours? Whence did you receive them and bring them into life? Just as if someone, having occupied a place for viewing in a theater, were then to keep out those entering, thinking that to be his own property which is offered for the common use of all: such also are rich men of this kind.... Are you not avaricious? Are you not a despoiler—you, namely, who make your own property those things which you received to be dispensed? Will he who strips a clothed man be called a thief, while he who does not clothe a naked man, although he can do so, is worthy of some other appellation? The bread which you hold back belongs to the hungry; the cloak which you preserve in a chest belongs to the naked; the shoe which is rotting in your possession belongs to the unshod; the silver which you have buried belongs to the needy. Therefore, to as many men as you could give, to so many do you inflict injury.” (Migne, P.G., vol. 31, cols. 275, 278.)

¹⁴ In presenting the Greek Fathers, we shall generally use the Latin translation as it stands in Migne, unless a few things should seem to require correction so that the mind of the Holy Doctors may appear more clearly.

b) The homily delivered during a time of famine and drought, no. 8: “Flocks of sheep feed upon one and the same mountain; very many horses take their pasture in one and the same field. In short, the individual brute animals yield to one another the use of necessary pasture. We, on the contrary, hide common things in our bosom; we alone possess what belongs to many.” (Migne, P.G., vol. 31, col. 326.)—

To a):

a) In the former passage, St. Basil merely inveighs rhetorically against the rich who do not readily share goods that are useless to themselves and were made for all. For these words are read immediately before it: “Make your brothers sharers in the grain; what will rot tomorrow, hand over today to the needy. The worst kind of avarice is not to distribute to the needy even those things which are perishing.” He argues from the intention of God who bestows goods (we gave the words above, no. 1); he appeals, in no. 8, to the Last Judgment: “For there the plunderer is not accused, but he who did not share his goods is condemned.” The comparison of the theater which he proposes is true if you understand it of a rich man who, however much he may abound in wealth, makes no liberal use of his goods.

β) By reason of the common destination of goods, in a broad sense he who does not grant things useless to himself to a needy man is injurious to the poor and a despoiler, for those things can be said to belong to the needy man in that broad sense. But since the Holy Doctor nowhere gives the poor man the faculty of taking them away, he plainly attributes to him no right strictly so called.

To b): In those extreme circumstances, by various arguments he exhorts the wealthier faithful to imitate through their largesses the Christians who followed a common life at Jerusalem. But once again he affirms only a community of destination. So far is he from denying rights of possession that, in the same passage, he asks them at least to appoint equal parts for pleasure and for the soul—that is, for present prosperity and heavenly life, which he presents as two daughters of the rich: “If you do not wish to give all things to the better daughter, at least divide them equally between the incontinent daughter and the chaste.”

3) **St. Gregory of Nyssa**, *On the Love of the Poor*, Oration 1: “Do not consider all things your own. Let there be a share also for the poor and the friends of God. For all things truly belong to Him whom we have as Father. But we are brothers. Therefore, as persons united in race and as brothers, it would indeed have been better and more just to receive the inheritance in equal shares. But since this has happened and one or two have taken the greatest part, let the rest at least receive some share.” (Migne, P.G., vol. 46, col. 466.)

In truth, what else occurs there but a most beautiful exhortation to almsgiving, which is the purpose of the whole oration? Nor is it surprising that he desired a more equitable distribution of goods, since that distribution was then rather unhappy, and even now there are those who express similar wishes, although they are very far removed from socialism.

4) Not a few words of **St. John Chrysostom** must be explained.

a) In Homily 10, chap. 3, *On the First Epistle to the Corinthians*, he seems to deny the very ownership of money when he says in no. 3: “Your soul is not yours, and how will your money be yours?... Therefore do not say: I spend my own; I enjoy my own. Certainly not your own, but another's.... For these things are common and belong also to your fellow servant, just as the sun is common, and the air, the earth, and all other things.” (Migne, P.G., vol. 61, col. 86.)

The matter presents no difficulty.

α) By the very fact that he employs the example of the soul, he sufficiently indicates that he merely denies us the absolute dominion which belongs to God alone, as he himself had just said: “For all things belong to God.”

β) He also denies that money is ours alone, because by destination it belongs to all: “It was handed over to you for your brothers.”

γ) He denies that it will truly be ours unless we share it with our brothers. For if we have given those goods away, they will truly profit us; otherwise they will destroy us. “You do not know that we shall be accused because we have used them badly.... The things of another become yours if you distribute them to others; but if you lavishly expend them upon yourself, then your own things become another's.” He then develops this in no. 4. He employs the same manner of arguing in Sermon 2 *On Lazarus*, no. 5 (Migne, P.G., vol. 48, col. 988).

δ) He pursues this end: to restrain the pride and arrogance of priests.

ε) As regards the last words, where money is said to be common like the sun and air, the Holy Doctor does not wish to make the two kinds of community altogether equal to each other. For in Homily 2 *To the People of Antioch*, no. 6, he expressly teaches that money is not common like air, water, etc.; and he adds the reason: “For if these necessities were not common, the rich, perhaps employing their customary avarice, would have suffocated the poor; for what they do with riches, they would have done much more with those things. On the other hand, if riches had been common and equally set before all, the occasion for almsgiving and the opportunity for benevolence would have been taken away.” (Migne, P.G., vol. 49, col. 43.)

b) Sermon 2 *On Lazarus*, chap. 4: “And this too is robbery: not to share from your resources.” (Migne, P.G., vol. 48, col. 987.)

The explanation is ready at hand: it is robbery because the resources were given in order that they be shared with the needy.

c) Homily 12, no. 4, chap. 4, *On the First Epistle to Timothy*: “For tell me, whence are you rich? From whom did you receive it? Whence did that other man receive it? From his grandfather, you will say, from his father. Will you be able, by ascending through the line of descent, to show that that possession is just? Surely you cannot; but its beginning and root must necessarily have proceeded from injustice. Why? Because from the beginning God did not make this man rich and that man poor; nor, when He created, did He show many treasures to this man and deprive that man of this discovery, but He left the same earth to all to be cultivated. Whence, therefore, since it is common, do you have so many acres, while your neighbor does not have even a clod?” (Migne, P.G., vol. 62, cols. 562-563.)—

In this passage, which is somewhat more difficult, the Holy Doctor resolves a doubt. In chap. 2 he had maintained that those who had placed their hope in worldly affairs would depart with empty hands. An adversary attacks this proposition: “What then, you will say, do you not see those who have obtained very many things, who with the least labors have attained great goods?” He himself replies that those things are not to be counted among goods. He adds the reason: because those riches, avariciously amassed and acquired without labor, are the fruit of iniquity. For since, as he argues approximately in this way, God made the condition of acquiring dominion equal for all men, it could not happen without injustice that one man should arrive at immense riches in comparison with another who is destitute. Unless we are mistaken, the Holy Doctor understands this proposition of those things which happen for the most part, yet not without exception. However he may have judged these matters, it is already evident from what has been said that he is far from wishing to establish anything new concerning property. Nor does he assail all riches with his words, but those which are acquired with the least labor and consist of gold or estates. For he defends the riches of Abraham and Job because they consisted of cattle, and the fortunes of Jacob because he became rich “after receiving the reward of his labors.” Moreover, as though conscious that he had amplified the matter somewhat, he corrects his words when, after the passage which is objected to us, he adds: “But I shall not examine these things more precisely. Let the riches, then, be just and free from every robbery; for you are not at fault if your father robbed: you indeed have those things from robbery, but you did not rob. Moreover, let it be granted also that he did not rob, but possesses gold brought forth from the earth: what then? Are riches good on that account? By no means.”

d) In Homily 7, nos. 2 and 3, *On the Acts of the Apostles*, he extols with praises the community of goods which flourished among the Christians of Jerusalem. “This was an angelic commonwealth: they said that nothing was their own. Hence the root of evils was cut away.... They cast away money and rejoiced, and there was great gladness.... That cold word, *mine and yours*, did not exist. Therefore there was exultation at the table.” (Migne, P.G., vol. 60, col. 66.)

St. John Chrysostom turns all these things to the praise of simplicity, a virtue which, in no. 3, he declares to be “far greater than contempt for riches, fasting, and perseverance in prayer.” But that one lives more happily by despising riches and pleasure and by cultivating holy simplicity than by pursuing earthly interests is a fact which religious experience daily, although they in no way hope that their manner of living will ever become common among men. Therefore, the socialists accomplish nothing from this.

e) But the Holy Doctor seems to have been of the opinion that a community of this kind should be commended and recommended universally. For he speaks thus in Homily 11 *On the Acts of the Apostles*, no. 3 (we transcribe the passage on account of its importance):

“If this were done even now, we would live with greater pleasure, both rich and poor; nor would it bring greater pleasure to the poor than to the rich. And, if you please, let us describe this in discourse and draw pleasure from it, since you are unwilling to do it in works. For it is especially apparent from what was done then that those who sold did not become needy, but also procured riches for the poor.

“But let us now describe this in discourse: let everyone sell all his possessions and bring them into the common stock—I say it in discourse; let no one be disturbed, neither rich nor poor. How much gold do you think would be collected? I conjecture, indeed (for it cannot be said with certainty), that if every man and woman here were to empty out all their money, if they were to hand over their fields, possessions, and houses (I would not say slaves, for there were none then, but perhaps they set them free), perhaps one million pounds of gold would be collected; indeed, twice or three times more. For tell me, how great a number of all kinds of men does our city (Constantinople) contain? How many do you suppose to be Christians? Do you suppose there are one hundred thousand, while the rest are Gentiles and Jews? How many thousands of pounds of gold would be collected? But how great is the number of the poor? I do not think it is more than fifty thousand. But to feed them daily, how great an abundance would there be?

“Certainly, with common food and a common table set before them, I do not think the expense would be so great. What then, you will ask, would we do when the resources had been consumed? Do you think they could ever be consumed? Would not the grace of God be a thousandfold more abundant? Would not the grace of God be poured out lavishly? What then? Would we not make earth heaven? If it shone forth in this way among three thousand and five thousand, and none of them complained of poverty, how much more would it do so in so great a multitude? Who even among outsiders would not add something? But to show that wealth when thus divided is expended more and is the cause of poverty, suppose there is a household in which there are ten children, a wife, and a husband; let the wife be occupied with wool-working, and let the husband bring in income from outside. Tell me, would they spend more while living in common and in one house, or when dispersed? It is evident that they would spend more when dispersed. For if the ten sons are dispersed, there will be need of ten houses, ten tables, ten servants, and likewise provision for everything else. What, moreover, where there is a multitude of slaves? Do they not all have the same table for this reason, lest the

expense become greater? For division always produces diminution; concord and consent produce increase. Thus men now live in monasteries, as the faithful once lived. Who has died of hunger? Who has not been fed with plentiful food? Yet men now fear this more than falling into the immense sea. But if we had made trial of this thing, we would undertake the matter boldly. How great do you think that grace would be? For if then, when there was scarcely any faithful person, but only three thousand and five thousand; when all who were in the world were enemies; when they expected consolation nowhere—they undertook the matter so vigorously: how much more now, when by the grace of God there are faithful throughout the whole world? Who would still remain a Gentile? No one, I think; thus we would have drawn all men and reconciled them to ourselves. But if we proceed by this path, through God I hope that the matter will be so. Only obey me, and we shall manage the matter well and in order; and if God grants life, I believe that we shall soon enter upon this manner of life.” (Migne, P.G., vol. 60, cols. 97-98.)

As regards this passage, however attractive it may be, we nevertheless think that these few remarks suffice: **α)** He speaks in mere words, not then thinking of execution (“I say it in discourse” [*tō logō legō*]), in such a way that he gives no occasion for disturbance of any kind, whether to the rich or to the poor; at most he cherishes some hope that a similar manner of life will someday be introduced. **β)** He celebrates the advantages of voluntary renunciation. But he is altogether silent about what he thought of legal spoliation. **γ)** He praises that form of community in which the fruits are brought into the common stock, while the crafts themselves are by no means conducted in common; and he seems chiefly to have intended that common tables be set up for the poor, so that perhaps by his final words he covertly designated only these.¹⁵ **δ)** He dares to recommend this community only to good Christians, and considers it sufficiently wonderful that by the sight of it unbelievers themselves would be led to Christ. **ε)** Yet he observes that the faithful are little inclined toward common life (“They fear this more, etc.”). Even if in this passage the Holy Doctor was perhaps deceived by excessive hope, nevertheless, after these things, it is evident to everyone how far he stands from the tenets of collectivism.

¹⁵ He speaks similarly in Homily 66 *On Matthew*, nos. 3-4 (Migne, P.G., vol. 57, cols. 630-631).

5) Among the Latin Fathers there is no one who addresses the rich more harshly than **St. Ambrose**.

α) On Naboth the Israelite, one book: **α)** Chap. 1, no. 2: “The earth was established in common for all, rich and poor; why do you rich men arrogate to yourselves a private right to the soil?” (Migne, P.L., vol. 14, col. 731.)—**β)** Chap. 12, no. 53: “You do not bestow upon the poor man from what is yours, but you return to him what is his. For that which was given in common for the use of all, you alone appropriate. The earth belongs to all, not to the rich; but those who do not use what is their own are fewer than those who do. Therefore you return a debt; you do not bestow what is not owed.” (Migne, *ibid.*, col. 747.)—

But observe that, at the beginning of this book, the rich men whom he attacks here are described by him in this way: “For who among the rich does not daily covet the things of others? Who among the most opulent does not strive to drive the poor man from his little field and to expel the needy man from the boundaries of his ancestral land? Who is content with his own? What rich man's soul is not inflamed by a neighboring possession?” Hence, **to α)**, the passage is to be interpreted thus: Since nature invited all men to possess the earth, why do you rich men, by unjustly harassing the poorer man, render this right of his fruitless, as though the earth had been made for you alone?—**To β)**,

merely the common destination of things is urged there, and the precept of almsgiving is impressed. Hence, by reason of the common destination, the rich man, in giving alms, is said to return to the poor man what is his; but, by denying alms, to appropriate for himself alone what is common. Then, to one who reads the whole of no. 53, it is evident that mercy toward the poor is merely commended there: first, as useful to the rich man—"It profits you.... Whatever you confer upon the needy grows for you; whatever you diminish grows for you.... Mercy is sown on earth; it germinates in heaven"—then, as necessary by divine precept:

"He who does not permit you to say, *Tomorrow I will give*, how does He permit you to say, *I will not give*?"—and the other words which were objected to us.

b) Exposition of Psalm 118, Sermon 8, no. 22: "It is unjust that one who shares your form should not be assisted by his companion, especially since the Lord our God willed this earth to be the common possession of all men and to supply fruits to all. But avarice distributed the rights of possessions. It is just, therefore, that if you claim as private to yourself something which was conferred in common upon the human race, indeed upon all living things, you should at least sprinkle something from it upon the poor, so that you do not deny food to those to whom you owe fellowship in your right." (Migne, P.L., vol. 15, cols. 1304-1305.)—

The passage is a little more obscure than the former. Yet it directly affirms nothing except a community of destination. Otherwise, how would he have said that it was conferred in common "upon all living things" (and not only upon men)? Then, since it is known from elsewhere that St. Ambrose recognizes private rights of possession, it can be understood in this way: God willed the earth to pour forth fruits for all. Common possession of the earth corresponds more closely *per se* to this intention. But avarice distributed the goods. Yet at the same time this common avarice made this regime necessary, and therefore sanctioned by God, as though from a second intention, once the vices of men were foreseen.

N.B. There are some who think that *avarice* here designates original sin fairly immediately. Thus Rev. D. Dignant, relying upon bk. 5, chap. 1, no. 2, *On the Hexaemeron* (Migne, P.L., vol. 14, col. 206), and bk. 1, chap. 28, no. 137, *On Duties* (Migne, P.L., vol. 16, col. 63).

c) On the Duties of Ministers, bk. 1, chap. 28, no. 132: "Then they (the pagan philosophers) thought the form of justice to be that someone should hold common things, that is, public things, as public, and private things as private. Not even this is according to nature, for nature poured forth all things in common for all. For thus God commanded all things to be generated, so that nourishment might be common to all and the earth might be the common possession of all. Nature, therefore, generated a common right; appropriation made a private right." (Migne, P.L., vol. 16, col. 62.)

By these words the Holy Doctor anticipates the opinion of Suarez, *On Laws*, bk. 2, chap. 14, no. 16: "Similarly, nature conferred dominion over all things in common and consequently gave to each person the power of using them; but it did not confer the private ownership of dominions in the same manner." In other words, private property is not in the same manner from nature; and, as regards a right in second act, the act of appropriating (taking) a thing made a private right. Thus we explain St. Ambrose. But whether he considers this act right or illicit, he does not indicate. Therefore, whereas previously, in no. 131, he had said of another tenet of the philosophers—"that no one should harm anyone unless provoked by injury"—that it "is emptied of force by the authority of

the Gospel,” concerning our tenet, with a censure of this kind omitted, he merely contends that it is not from nature; but that the Christian form of justice requires that private things not be held absolutely as private (even as regards use), but that men assist one another with money as with other endowments. Cf. also no. 135.

N.B. There is some controversy about the force which the word *usurpatio* has in this passage, since the Reverend Fathers Capart and Cathrein understand it as occupation, while Rev. D. de Gryse understands it as unjust usurpation—insofar as the pagan conception of property would not be lawful.

6) St. Augustine. a) Exposition of Psalm 131, no. 5: “On account of those things which we possess individually, there arise lawsuits, enmities, discords, wars among men, tumults, dissensions against one another, scandals, sins, iniquities, and homicides. On account of what? On account of the very things which we possess individually. Do we quarrel on account of those things which we possess in common? We breathe this air in common; we all see the sun in common.” (Migne, P.L., vol. 37, col. 1718.)—

The Holy Doctor teaches nothing else here except the necessity of charity, so that, according to the wish of the Psalmist, a place may be found for the Lord. Opposed to this charity is the love of a private good to the neglect of the common good. Just as the Apostle complained, “All seek the things that are their own, not the things of Jesus Christ,” in altogether the same manner St. Augustine, loc. cit., says: “But many, lest they make a place for the Lord, seek their own things, love their own things, rejoice in their own power, and covet what is privately theirs.” Hence it is apparent that, in the judgment of the Holy Doctor, lawsuits and discords must be traced back less to possessions than to private desires, of which possessions are the occasion, according to the saying: “Whence are lawsuits and wars among you? Are they not from your desires?” Hence he asks Christians to rejoice “not in what is private but in what is common.” The faithful who brought their possessions into the common stock at Jerusalem did this excellently. Yet the same is not therefore required of all, nor is it pronounced possible to do universally. Hence St. Augustine himself concludes thus in no. 6: “Therefore, brothers, let us abstain from the possession of private property; or from its love, if we cannot abstain from its possession; and we make a place for the Lord.... What does it mean, make a place for Him? Do not love yourself; love Him.”

b) Exposition of Psalm 147, no. 12: “The superfluities of the rich are the necessities of the poor. Things belonging to another are possessed when superfluities are possessed.” (Migne, P.L., vol. 37, col. 1922.)

This passage, in exhorting to mercy, merely impresses the precept of distributing the “surplus,” which, by reason of this destination, is called, in a broad sense, something belonging to another.

c) On St. John, tractate 6, no. 25: “Whence does each person possess what he possesses? Is it not by human law? For by divine law, *the earth is the Lord's and its fullness....* Take away the laws of the emperors, and who dares to say, that estate is mine, or that slave is mine, or this house is mine?” (Migne, P.L., vol. 35, col. 1437.) This passage was transcribed by Gratian, D. 8, canon 1, under this rubric: “By divine law all things are common to all; but by the law of constitution, this is mine and that belongs to another.”—

When the Donatists complained that ecclesiastical estates had been taken from them by the Catholics, St. Augustine replied that they could claim these for themselves by no right. Not by human law, since the emperors had commanded that heretics “should dare to possess nothing in the name of the Church”; nor by divine law, since they had defected from Christ. “How does he possess by divine law who says, I baptize, when the dove says, This is He who baptizes, etc.?” (Ibid., no. 26.) This is the genuine meaning of the passage.

As regards the very words now alleged, we reply with Lessius, chap. 5, no. 10, that the remote cause of dominion is not in question, but the proximate cause by which a thing is assigned to this person rather than to that one. But this assignment must be made in some manner approved by human law, especially when a moral person is under discussion. “For you know, my brothers,” he says, “that these estates do not belong to Augustine,” but belong to the dove (the Church).

Gratian's rubric, however, must be understood of that divine disposition by which, before legitimate appropriation, we showed that things belong to a certain common dominion of the human race. Moreover, if anyone thinks that Gratian went beyond measure in his words, he may do so as far as we are concerned, since that collection, however great its authority, cannot nevertheless be counted among the authentic sources of law.

7. St. Jerome, Epistle 120, *To Hedibia*, chap. 1: “Make for yourself many friends from the mammon of iniquity.... He beautifully said, *from iniquity*; for all riches descend from iniquity, and unless one person has lost something, another cannot find it. Hence even that common saying seems to me to be most true: A rich man is either unjust or the heir of an unjust man.¹⁶ ... If you have more than is necessary to you for food and clothing, distribute it, and know that in this matter you are a debtor.” (Migne, P.L., vol. 22, cols. 984-985.)—

¹⁶ On this saying and the mind of St. Jerome, cf. *Collationes Brugenses*, vol. 2, p. 339 ff.

In the former passage which is proposed, the Holy Doctor means nothing else than that great riches—especially in his own time—are generally the fruits of avarice and robbery. Cf. St. Ambrose, *On Naboth the Israelite*, in the passage cited above; and St. Jerome himself, *On Isaiah*, chap. 33, v. 13 ff.: “For money is not amassed for one person except with the loss and harm of another” (Migne, P.L., vol. 24, col. 367); and *On Micah*, chap. 6, v. 10 ff.: “All riches, while they despoil others, are born from iniquity.”¹⁷ (Migne, P.L., vol. 25, col. 1213.) He then confirms this with a proverb in which, as is customary, that which commonly occurs is stated simply: “A rich man is either unjust or the heir of an unjust man.”

¹⁷ These passages are indicated in the Bruges article mentioned above.

N.B. Twice, in other works, he repeats that saying, which had become a proverb: *Commentary on Jeremiah*, chap. 5, v. 26, where, clearly, as in our passage, he attacks evil rich men (Migne, P.L., vol. 24, col. 719); and *Commentary on Habakkuk*, chap. 3, v. 7 (Migne, P.L., vol. 25, col. 1316), where the word is taken more broadly for every kind of iniquity (pleasure, luxury, avarice), by which rich men become guests of the evil demon. Therefore, no special difficulty occurs here.

In the latter passage, however, it must be observed that St. Jerome writes this letter to a Christian widow who had questioned him about perfection. “You ask how someone can be perfect and how a widow who has been left without children ought to live” (chap. 1; Migne, P.L., vol. 22, col. 982). Therefore, he speaks rather about the duty of perfection, about perfect renunciation of the world. He

immediately discloses his mind: “Otherwise one is freely permitted either to give or not to give. Although, for him who desires to be perfect, present poverty must be compensated by future riches.” (Col. 985.)

8. St. Gregory the Great, *Pastoral Rule*, part 3, chap. 21: “In vain do they consider themselves innocent who claim for themselves as private the common gift of God, etc.” (Migne, P.L., vol. 77, col. 87.)

He too plainly merely condemns there the inhuman tenacity of the rich, whom he says must be admonished differently from those who give alms but plunder the things of others. There is therefore no reason for us to linger here.

Article II. The Proximate Cause of Property, or the Primordial Fact

§ 1. Notions and Opinions

211. What is the proximate cause of property? The proximate cause of private possession—whose remote cause we have proved to be nature itself—is held to be any title upon which the right of possessing some thing immediately rests. Therefore, while the remote cause brings it about that goods are divided, this is the proper force of the proximate cause: that the thing belongs to this person rather than to that one; through it, therefore, the “abstract” faculty of possessing things is reduced to “concrete” act. Why say more? The proximate cause is a mode of acquiring.

Now, among modes of acquiring, some are original and others derivative. The latter contain a formal succession into the right of another; through the former a thing is possessed as though for the first time. *As though for the first time*, I say; for original modes can concern not only a thing belonging to no one, but also a thing which another made his own and did not willingly relinquish. Thus you can acquire another's thing by usucaption, which mode is nevertheless numbered among the original modes.

Succession itself is both universal and particular, according as it regards a patrimony, whether whole or in part, or a particular thing.

Some modes are natural, which already have force from nature itself, such as true occupation and donation; others are civil, which flow from law: thus treasure and, as most hold, prescription—unless you wish to call civil all those modes of acquiring which are recognized by positive law. For the most part, a mode of acquiring is civil only in part, insofar as some form of a natural mode is sanctioned by law—as, for example, a form of occupation which lacks something *per se* for generating property. Observe that, since by law you can hold a thing either as though you were the first possessor or as though it were received from another (succession by law), law, for various reasons, is numbered among either original or derivative titles.

212. What is asked here. Moreover, at present the question does not concern every title of property, but that title which *per se*, without another assistance which perhaps cooperates together with it, is suitable for attributing ownership of a thing belonging to no one. Since this title, at the beginning, had to be employed formally or virtually so that things might become private from being common, it is customarily designated by the name *primordial fact*.

213. Opinions. Most place this primordial fact in occupation. The Scholastic Doctors seem to support them.

Thus Molina: “The natural act by which possession of things would have had to be acquired both before the division of things, and, after their division, is acquired together with dominion over those things which previously belonged to no one, is their bodily apprehension.” (Tract 2, disp. 12, no. 4.) For Lessius and C. de Lugo, a true apprehension suffices. Cf. Lessius, chap. 3, no. 46; C. de Lugo, disp. 2, no. 63.

Occupation, however, is described as: “The apprehension of things belonging to no one, with the intention of holding them as one's own.” Thus Rev. Fr. Cathrein, who nevertheless, besides the apprehension by which the will to hold the thing as one's own is declared, requires a marking, “that is, a known and lasting sign impressed upon the occupied thing itself.” He requires this so that “it may be apparent that the apprehension was made for stable possession.” Cf. Cathrein, *Moral Philosophy*, no. 374.

Others, on the contrary—chiefly economists—to whom this title seems *per se* too uncertain and indefinite, especially if it is extended to immovable things, place this fact in labor, or work expended upon the thing. Yet we are not now considering those who deny that anything except the fruits of labor can be claimed by man as his own; for we no longer have business with them or with others who think less correctly about the origin of property. Rather, we mean those who think that only when work has been expended is the thing sufficiently bound to someone that it becomes his property. But they understand by *work* not only that by which the thing changes its form and figure, but also that by which it is truly apprehended or occupied.¹ When they speak thus, they seem to approach very closely to the former opinion, except that formally they differ from it. For the former employed apprehension as such, so that labor was for them a certain manner of apprehending a thing; the latter take account of labor alone, and for them apprehension is a certain manner of labor.

¹ Thus Cauwès, *Cours d'économie politique* [Course of Political Economy], vol. 3, pp. 959-963: Labor can be “a labor of appropriation or true occupation, just as well as of subsequent transformation.”

Furthermore, that power which is said to be present in occupation can be explained in various ways. Rev. Fr. Cathrein, as we have seen, formally considers this: that occupation is a sign suited to manifesting the will to hold the thing as one's own. In this way the acquisition of things is traced back to the efficacy of the human will alone: man makes things his own by his will, provided (under this law and condition) that he makes this will sufficiently manifest. I do not know whether this explanation is approved by all, and whether others would not rather judge that the efficacy of some external fact must be joined to the will; and concerning that fact it could again be asked whether it is labor or something else affecting the thing itself. This is certain: Carrière² requires, besides the manifested will, “that the thing be physically subjected to power ... that it be constituted under our power”; and, among the more recent theologians who have treated our argument, there are those who defend the former opinion in such a way that they seem rather openly to concede something also to the latter. The Most Illustrious Bishop Waffelaert has these words: “Nevertheless, it seems ... that some industry and labor are required in occupation in order that there may be permanent property in the very substance of the things occupied” (*On Justice*, vol. 1, no. 33); Rev. Fr. Holaind ascribes to apprehension, which he calls fictitious or legal, merely the beginning of a title to be perfected through true occupation, by which a new utility is imparted to the thing.³

² *On Justice and Right*, no. 286.

³ "Fictitious occupation is the first title, and real occupation its complement." (Op. cit., chap. 7, pp. 82-84.)

We rather assent to these men, as we shall show immediately.

§ 2. Formulation and Arguments of the Proposition

THESIS XIV

The primordial fact by which stable property in a thing belonging to no one is acquired is true occupation, by which the thing, according to its nature, is shown to be subject to someone's power or to serve him for a use which cannot be common.

214. I. State of the Question. After what has been said, it will be enough **TO EXPLAIN THE TERMS.**

The primordial fact, or the title which, being prior by nature, *per se* gave origin to private possessions. We say *per se* because causes of appropriation can occur which are produced by the power of jurisdiction or by common consent. Thus today it happens not infrequently that uncultivated lands are assigned to private persons by a decree of the ruler; and already in the most ancient times Abraham and Lot divided the pastures between themselves by a certain agreement.¹ These and similar things can be omitted by us. We have only this one thing to prove: that occupation, such as we have described it, is *per se* suitable for conferring private possession, so that unless, *per accidens*, some artificial mode intervened, the first property in things which belong to no one is to be derived from occupation. And under this rationale, and no other, we call it the primordial fact.

¹ Cf. Genesis, chap. 13.

By which ... stable property is acquired. For the question concerns that property which is not lost together with physical apprehension or use, but is of itself perpetual. For the present use of a thing which belongs to no one would have been inviolable even in the state of integral nature, and even now it is sanctioned concerning things which have remained common. Thus no one can prevent me from receiving sunlight or collecting rain. The reason for this is that one who obstructed a use of this kind would inflict violence upon the person himself who is using it. Cf. no. 195.

Of a thing belonging to no one: This condition is negatively required so that occupation can exercise its force.

Is occupation. We shall describe this as: the apprehension or subjection to power of an external thing which is capable of commerce, with the intention of holding it as one's own.

True, which we distinguish from fictitious occupation, which is not infrequently called *legal*, because from law, but not *per se*, it is considered suitable for conferring dominion. But what true occupation is, we immediately add:

By which the thing, according to its nature, is shown to be subject to someone's power or to serve him for a use which cannot be common. By this mark, therefore, we define true occupation: that it impresses upon the thing a conspicuous sign by which either it appears to be subject to someone—as when a thing is enclosed in a chest, placed in one's own house or in a place already belonging to someone, or among things

possessed by someone—or it provides him a utility which cannot be common. Suppose that I admire the location of some tract of ground, pass through that tract, or rest my limbs upon it: another person can equally obtain utilities of this kind from the thing, without inconvenience to me, either at the same time or after I have departed. But if I have begun to clear a field, to prepare it for cultivation, to sow seed in it, or to erect a building, it is evident that these uses cannot belong to several persons, but that what you grant to one will be withdrawn from another. Now we contend that the thing is truly occupied by you because you have made the latter use, and by no means because you have made the former.

According to its nature. For the modes of subjecting things or using them must be accommodated to the nature of the things. We exercise dominion over tame animals in one way and over wild animals in another; we use a meadow in one way and a coppice in another.

As regards the **NOTE OF THE THESIS**, it is sufficiently evident that no theological censure can be imposed upon the other opinions. We hand down the doctrine which pleases us and is approved by most.

215. II. Proof.

First Argument. The primordial fact is that which, together with the will to possess property, joins the proximate matter of this right.

But. Such is true occupation alone, as we have described it.

Therefore. This occupation is the primordial fact.

To the major. For in order that you may pass from an “abstract,” or hypothetical, right to a “concrete,” or absolute, right, nothing further can be required besides the will to enjoy the right than that you be situated in those circumstances and have fulfilled those conditions which furnish the right with its proximate foundation and rationale. For in these moral matters no less than in physical matters, the form of the right is educed from the potency of matter proximately disposed for it; but, so long as the proximate matter is not present, it is sufficiently evident that something is lacking for the introduction of the form.

To the minor. Concerning the intention of an owner and the conspicuous sign which we require, there is no doubt, nor can there be. For a right which we are able to renounce takes its beginning from our will. But that those things upon which a right is founded must consist in a conspicuous sign is apparent to one who considers that it belongs to the essence of a right that men be bound by the duty of observing it; yet they can have knowledge of the right only through conspicuous signs. But there is no duty of observing a right which is of itself unknown.

It remains, therefore, for us to show: **1)** that the proximate matter of the right of property is perfected by the remaining marks which we have given; **2)** that this matter is not furnished by the tenets of those who oppose us.

1) Consider the various notions of the right of property which are commonly received. From these, that right appears to be the inviolable precedence of some person with respect to some thing; the right of exercising exclusive dominion over some thing, of excluding others from a utility whose supply is not infinite; the faculty of referring a thing to one's own utility, on account of the peculiar

connection which the thing has with oneself;² the right which belongs to a person of having what is ordered to him;³ a certain extension of the dominion which we have over the use of our faculties.

² C. de Lugo, disp. 1, nos. 5-6.

³ St. Thomas, I, q. 21, art. 1.

But. By these notions, the right of property is presented as rendered concrete by some fact, as its *proximate matter*, and by the sanction by which it is forbidden to be violated, as its *form*. But the fact is either the subjection of the thing or a use which is not common.

Therefore. Dominion truly exercised and a utility obtained which cannot be possessed simultaneously by others are, as we were saying, the proximate matter of the right of property.

This latter minor is proved. *Inviolable precedence* signifies a precedence existing in fact, and therefore the subjection of the thing itself, and the sanction of that subjection; *the right of exercising exclusive dominion, of excluding others from a utility*, contains as its matter dominion over and use of the thing; even more clearly, *the faculty whose cause is said to be a peculiar connection of the thing with the person* requires a connection of the same order as the faculty, which accordingly consists in this: that the thing truly redounds to someone's own good; *the right of having what is ordered to you* signifies an ordering already made; finally, our faculties and members are joined to us by nature in such a way that they truly serve us and are subject to us; therefore, in order that we may obtain a similar right over external things, we must first make them subject to us in the same manner.

Molina speaks appositely: "The faculty or right of disposing perfectly is the effect of dominion.... It comes about ... that the relation of right follows the relation of dominion for this reason: each person has the faculty ... of disposing perfectly of some thing because that thing is his and he himself is its owner."⁴ Lessius says: "Dominion, on the part of the thing, signifies the subjection of the thing and, as it were, a servitude by which it is bound to its owner";⁵ and C. de Lugo: "That right which arises from the very connection which we have with some thing," disp. 2, no. 3. Cf. also Van Gestel, *On Justice and Civil Law*, VIII, p. 26.

⁴ Tract 2, disp. 3, no. 5.

⁵ Chap. 3, no. 11.

2) What the adversaries hold to be the primordial fact does not furnish that proximate matter.

For some point to *law* or a *compact*. But property is older than civil society and consequently than law, and it is sanctioned by nature without law or compact.

Others rely upon occupation insofar as it *manifests the will to possess*. But we do not see why precisely this manifestation of will would then be necessary, or why another manifestation, equally solemn or even more solemn—such as one made by a public edict—could not suffice. Furthermore, by means of an occupation of this kind someone could acquire immense lands with almost no labor. Nor may you say that he would be prohibited by law. For what if we are situated outside civil society? Finally, even the most manifest will to acquire some thing does *per se* nothing to the thing itself. What power can therefore be present in it to bind a thing to someone by a stable bond? This is by no means apparent.

Nor do others more successfully establish *labor itself* as the primordial fact. For either they understand the work by which a thing changes its species: but by what title, then, will the many

things which of themselves have been adapted by nature for our uses⁶ enter private dominion? Or they are now content with that work which is contained in every occupation: and what labor then contributes formally is not demonstrated. And, speaking universally, there is no doubt that each person acquires the fruit of his own labor; but beyond this nothing can be concluded formally from labor. Hence those who hold labor as a title, if they are asked the rationale why they judge thus, can argue only from the connection which is introduced through labor between the thing and the artisan, so that at last they formally invoke the latter as the cause.

⁶ Consider fruits, animals, gold found by chance, etc.

Second Argument. The primordial fact must be such that it sufficiently connects the external thing with a particular person, so that the thing, besides the common destination by which it is assigned to the human race, receives another destination by which it appears to be assigned to this particular person.

But. Apart from law, which cannot be a universal title, such a fact is occupation alone as we have defined it. **Therefore.**

To the major. For until the thing has this special destination, there is no reason why it should be said to belong to one person rather than to another.

To the minor. 1) True occupation is such a fact. For whence do we know that external things were made for the human race and can become private, except from the fact that they admit of true dominion by men and can be useful to them? But if things “in potency” belong to those who are able to subject them to themselves and apply them to their own utility, they will begin “in act” to belong to him to whose power they are truly subjected or whose utilities and advantages they serve in act.

2) Apart from law, which cannot have general force, occupation is the only such fact. For a compact to distribute a thing common to a family or tribe presupposes that it is already possessed in common by the family or tribe. Concerning this common property it is asked how it arose.—*Occupation which merely manifests the will* changes nothing in the relation of the thing; nor is it undeservedly argued against it that it is less definite and permits the useless usurpation of a vast region.—Finally, *labor* is materially suitable for introducing this destination; formally, however, it is of no avail except because it is a mode of subjecting a thing to oneself or converting it to one's own uses.

216. III. Difficulties.

1. From the first moment in which someone has begun to occupy a thing, he must already be able, by the protection of a right, to prohibit others who wish to disturb his possession. **Therefore.** From that moment already, before the completion of occupation properly so called, he will be the owner of the thing.

Reply. I distinguish the antecedent. He must already enjoy the protection of some right, **C.**; he must be protected by the safeguard of property, **N.**

The right by which he is protected is the very right of making things one's own, which demands that men be able peacefully to order things to themselves. Yet before the ordering has been made, stable dominion will not have been acquired.

2. True occupation is a certain labor. **Therefore.** Appropriation can be attributed to labor. But if this can be done, it will be better attributed to labor, since this title is more acceptable to all. Thus, in substance, D. Cauwès, vol. 3, nos. 961-963.

Reply. I pass over the antecedent. I distinguish the consequent: Therefore. Appropriation can be attributed to labor taken either materially or formally, **C. or I pass over;** taken formally, **I deny the consequent.**

§ 3. Supplements to the Doctrine

I. COROLLARIES

217. Concerning Hunting and Fishing, by which wild animals and fish are occupied.

1) It follows from what has been said that wild animals and fish are formally acquired by the fact that they are properly captured or are judged morally captured, because, for example, on account of the narrow enclosure or pond in which they are contained, they can easily be apprehended. Therefore, it is not enough for acquiring dominion over them that they are or remain upon your land. Indeed, not even because they are so contained by enclosures that they cannot escape will the wild animals already become yours, if, nevertheless, on account of the size of the place they are considered to have been left to their natural liberty. The theologians sufficiently agree upon this conclusion, so that our opinion concerning occupation is thereby confirmed. Cf. Molina, disp. 41, no. 11.

2) Yet the right of hunting *per se* belongs to the owner of the field. In this right either he himself or another to whom he has transferred the right can suffer damage from the illicit hunting of others, which must be compensated by restitution. The same must be said concerning the right of fishing.

3) Moreover, laws are accustomed to provide that hunting not take place at certain times of the year, and that fish not be caught with any and every instrument; they also generally establish certain conditions for one hunting in his own field. For they wish the very species of wild animals to be preserved, lest those who take pleasure in hunting should soon be deprived of their recreation. Nor is the public authority prohibited from issuing decrees of this kind.

Yet it easily happens that measure is exceeded in these matters. For neither should the right of hunting, fishing, etc., which has been granted by nature, be rashly restrained; nor should excessive penalties be established for private persons who take for themselves a wild animal which is not permitted; nor can the lawful privilege of some be excessively harmful to others. Hence, if cultivators of fields suffer losses from multiplied wild animals, they must be furnished with an expeditious right to appropriate compensation. Molina already treats this argument excellently; he may usefully be consulted in disps. 43 and 45, and especially disp. 46, nos. 1-2.

A question was recently raised in Belgium concerning rabbits, and a greater faculty of destroying them was rightly granted to cultivators of fields, a faculty which cannot be derogated by private agreement.¹

¹ Cf. Documents of the Supreme Council of Agriculture, published in 1898, and the law of April 4, 1900 (*Moniteur*, May 13).

4) Apart from damage to private persons, theologians assign to these prohibitions against hunting and fishing only the force of penal laws.

218. Concerning coal seams and other things of this kind, Lessius already judges (chap. 5, dub. 12) that they *per se* belong to the owner of the land in which they are found; and those who wrote after him sufficiently agree. They bring forward the reason that the owner of the soil possesses the deepest ground. It can certainly be so established by laws.² Yet *per se*, according to our opinion, seams which lie deep in the earth in such a way that they can be worked while the surface remains untouched are not in reality occupied for the reason that you have built upon the soil or have begun to cultivate the field. For you neither exercise dominion over these seams nor have you thought of obtaining any such utility from the thing. Therefore, they belong to no one until, by digging the earth, you have brought it about that your occupation extends to those seams. But from the right which *per se* belongs to individual possessors to dig their own land, and from the necessity, in order to work mines or seams usefully, of driving tunnels beneath many domains, many controversies and lawsuits will easily flow. Hence this right of mines is customarily governed by special laws.

² "Ownership of the soil carries with it ownership of what is above and below." Thus the French Civil Code, art. 552; but art. 905 of the German Code already speaks less absolutely.

II. SCHOLIA

219. Occupation through another. Those acts in which occupation consists can be performed either through ourselves or also through others who perform them in our name.

220. The historical process of property, whatever it may have been, is not altogether established; yet it seems to have no bearing at all upon the truth of the thesis. For even if land was assigned to each person in the beginning through some exercise of jurisdiction, this by no means takes away the native force of occupation. Indeed, among the Scholastics, who all adhere to the doctrine concerning occupation, not a few at the same time ascribe the division of fields to one of the first patriarchs, such as Noah. But D. Cauwès³ is greatly mistaken when he thinks that the fact that the first possessions were common to some family is opposed to this doctrine concerning occupation, as though the rationale by which a few men in common and that by which one man alone make some thing their own were different.

³ Cf. Cauwès, *Cours d'économie politique* [Course of Political Economy], vol. 3, nos. 961-962. Indeed, he confirms the thesis when he writes: "Formerly it [occupation] was indeed the origin of property, but not of individual property."

221. Under what rationale property is preserved. This is the force of the reasons which demand stable property: they show that a thing which began to belong to someone by true occupation remains his by the intention alone of preserving it, so long, however, as the faculty of using it has not altogether perished of itself. For to what end is property—that is, the inviolable faculty of using and disposing of some thing—when the faculty of using it itself has departed? Hence, by death the bond by which a thing was joined to its owner is dissolved; hence wild animals which have recovered their former liberty, and things so lost that the hope of finding them has vanished, must also be considered things belonging to no one; and both by confusion, by which money or a similar thing is so mixed with another's money or things that it can no longer be distinguished, and by specification, by which a thing has completely changed its kind (as when a statue is produced from marble), dominion over the very bodies of those things perishes. Nevertheless, there remains in the person to whom they

have come a personal obligation to repair the damage in proportion to the profit made or the fault committed. For specification is the production of a new thing from another's material. Yet there is not the same agreement that, once specification has taken place, the material belongs to him who employed it; and the matter is customarily defined more precisely by positive laws.

Section II. On the Law by which Inheritances and Wills are Sanctioned

Molina, tract 2, disp. 124, no. 12; Grotius, *De iure belli et pacis* [On the Law of War and Peace], bk. 2, chap. 6, § 14; chap. 7, § 3; Carrière, *On Justice and Right*, nos. 501-505; *On Contracts*, nos. 497-498; Taparelli, *Saggio teoretico* [Theoretical Essay], etc., nos. 778-789; Marrès, *On Justice*, vol. 1, no. 260; Waffelaert, *On Justice*, no. 265; Cathrein, *Moralphilosophie* [Moral Philosophy], vol. 2, sect. 1, bk. 4, chap. 5, art. 2, p. 327 ff., 3rd ed.; *Moral Philosophy*, nos. 391-393, 395-403; Castelein, *Institutions of Moral and Social Philosophy*, pp. 309-312; Aubry and Rau, *Droit civil français* [French Civil Law], vol. 6, § 588.

Article I. Notions and Opinions

222. Concerning the alienation of goods in general. 1. No one doubts that, by the consent of two capable persons, it can *per se* come about that the right in a thing and the dominion of property itself are handed over from one to the other, so that there is a succession of one into the place of the other. Aristotle defined the right of property itself by this faculty of alienating.¹

¹ Ὅρος ... τοῦ τε οἰκεῖον εἶναι ... ὅταν ἐφ' αὐτῷ ἢ ἀπαλλοτριῶσαι: "The definition ... of a thing's being one's own ... is when it lies within one's power to alienate it." "The proper definition of a thing is that you can alienate it." (Aristotle, *Rhetoric*, bk. 1, chap. 5, no. 7.)

Yet we are less pleased with the explanation of some who present this succession as consisting concretely in the conditional renunciation of one person and the acceptance of the other; as though one who gives, sells, or cedes property were disposed in mind thus: I yield my possession if another wishes to acquire it; while the donee or buyer, by his assent, satisfies the imposed law or condition; and by these two acts the whole transfer of the right is completed. Thus the matter is explained by John Duns Scotus, *On IV Sentences*, dist. 15, q. 2, no. 11; Carrière, *On Contracts*, no. 497; and Rev. Fr. Cathrein. They then prove the very power of giving from the faculty of relinquishing goods which belongs to the owner and from the faculty of possessing which is innate in man.

But if one person merely loses possession and another merely acquires a thing lost by the former, there is only material succession, by which one person comes after another, but he does not formally derive his right from the other. And in reality the donor then merely removes the obstacle which prevents the other from occupying, by the efficacy of his own will, the thing as though it were vacant. But if this is so, it is no longer apparent how the thing can come into the power of another without true occupation such as we established as requisite in article 2 of the preceding section, in order that someone might acquire a thing for himself by the power of his own will. Hence, moreover, by the very law of nature, true delivery would be necessary for alienating possessions. This explanation of succession must therefore be perfected; and in him who cedes his right there must be posited, in addition, the formal intention of substituting in his own place another who, if he assents, can continue strictly the same right. And this is done without any interval, so that the saying of the

philosophers concerning the succession of forms can be transferred to this cause: the corruption of one is the generation of another.

But the faculty of alienating is proved by the fact that, without the commerce and exchange of things, men would not obtain from the right of property those utilities for the sake of which it was granted by nature. And just as, from the beginning, someone could perform in another's name the things required for the true occupation of a thing and thus acquire the thing for the other, so there is no repugnance in his later willing to be made, as it were, the cause of the other person and that those things by which he acquired for himself possession of the thing should benefit the other, so that by the same bond by which the thing was bound to the prior possessor it is thenceforth bound to the other.

223. The object of the question and the opinions. But now we are not treating of every succession, but of that by which someone succeeds into the place of the deceased, whether by testament or intestate; concerning this succession we ask only whether the right of testaments and inheritances has force by positive human law or also by the law of nature. Here again there occurs a rather great diversity of opinions.

a) **The Scholastic Doctors**, whose protection it would be helpful to employ, passed over the question in silence. Molina, however, who notes that the matter was already disputed in his own age, unhesitatingly asserts, loc. cit., concerning testaments, that “by the law of nations, indeed by natural law, it belongs “to the law of nations, indeed to natural law, that each person can dispose of his goods by a last will.”

b) The modern authors have various manners of opining, which can conveniently be distributed thus:

Some attribute both kinds of inheritance, taken generically—not as regards the various determinations of mode and degree which, it is agreed, must be traced to civil law—to natural law itself. Thus Rev. D. Marrès and the Most Illustrious Bishop Waffelaert, loc. cit.

Others judge that the devolution of goods upon the family is established by nature; but that one can give goods to another by testament they regard as a positive institution of law, although consonant with the wishes of nature. Thus Taparelli, S.J., seems to opine, loc. cit.

Several others, by an altogether inverse rationale, hold the faculty of making a testament to be natural, but not the entry upon an intestate inheritance. In their number we place those who, like Grotius, d'Annibale, and Rev. Fr. Cathrein, in the absence of a testament assign the goods to the family from a conjecture concerning the will of the deceased. For in reality they reduce all natural succession to a formal or presumed testament.

Carrière, *On Contracts*, no. 498, with not a few canonists—for example, Schmalzgrueber, bk. 3, title 26, nos. 3-9—rather denies a natural right of testaments. As regards intestate succession, he thinks that something must be attributed jointly to natural and positive law, so that he concludes: “The right of succession indeed has its foundation in natural law, and its origin, as regards its substance, can be attributed to this law; but the order of successions, or the determination of that whole matter, can also be traced to civil law.” (*On Justice and Right*, no. 503.5.)

Not a few legists, after Montesquieu,² attribute everything to positive law.

² *De l'esprit des lois* [*The Spirit of the Laws*], bk. 26, chap. 6.

Until now, however, most, not to say all, considered both kinds of succession so consonant with the wishes of nature and so necessary to the common good that they did not think even in the least of abolishing this right.

The socialists think differently. Hostile to this right, they wish all inheritance to be suppressed, unless perhaps you except that by which goods devolve upon descendants.

c) Finally, as far as we are concerned, we think this to have been certainly sanctioned by nature itself: that in society there be, “disjunctively,” either the right of testaments or intestate inheritance. Indeed, it seems to us that one must proceed further and establish that both kinds of inheritance, as regards their substance, proceed from nature itself.

N.B. This same variety of opinions can be observed in civil law itself. Thus, in Roman law, and consequently in the parts of France which employed written law (*pays de droit écrit*), everything was referred to a testament; when this was lacking, the law endeavored to distribute the goods to the heirs according to the judgment of the deceased. On the contrary, in the parts governed by customary law (*pays de droit coutumier*), the innate right of the family was instead sanctioned, so that among them no one was a true heir except him whom God had constituted. Hence these proverbs: *Heirs are begotten, not written;—God alone can make heirs, not man.*

Article II. Conclusion and Supplements to the Doctrine

THESIS XV

Nature itself requires that there be among men some right of inheritance.

Indeed, as regards their substance, both the right of making a testament and the hereditary succession of the family seem to be sanctioned by nature.

Regularly, however, the right of the family is subject to the will of the deceased.

224. I. State of the Question. 1. THE INTENTION OF THE THESIS is that the manner in which inheritances proceed from nature be accurately defined. Hence we have made the conclusion threefold. In the first part, which we hold as certain, we contend that it is owed to nature that there be some inheritances. In the second, we assent to the opinion of those who trace to nature itself both the efficacy of the last will and also the proper right of the family to succeed to the goods of the deceased. Yet lest one right appear contrary to the other, in the third part we shall endeavor to establish that the right of making a testament is the principal one, so that it can regularly annul the right of the family to take the inheritance.

2. THE TERMS ARE EXPLAINED.

Nature itself requires, and consequently confirms the institution by its authority.

That there be among men, after political society has been entered upon and even before it, as soon as the division of things is demanded by the multitude of men.

Some right of inheritance, that is, that there be those who, whether by testament or intestate, can claim as their own the goods of a deceased person. We do not define the matter further; nor do we here demand both modes of entering upon an inheritance at once, but we are content with either one.

Indeed: we now contend for more.

As regards their substance, for no one doubts that most determinations must be supplied by positive law.

Seem to be sanctioned by nature; we therefore propose these things as less certain.

Both the right of making a testament. We take *testament* broadly for every act by which someone's last will concerning his goods, whether all of them or only some, is signified, in such a way that no acceptance is required while the testator is alive and every effect is deferred to the first moment after death. Moreover, this definition sufficiently accords with the rationale of a testament in French law, art. 895, and German law, art. 1937; whereas in Roman law there was no testament unless someone instituted an heir and pronounced his judgment concerning the whole patrimony.

And the hereditary succession of the family. Therefore, we recognize in the family itself a title for entering upon the inheritance which, proceeding immediately from nature, rests upon no presumed will of the deceased. Moreover, by *family* we understand all persons closely joined by blood or marriage, especially those who are accustomed *per se* to dwell in the same house.

Regularly, however, unless positive law or a strict duty of piety stands in the way.

The right of the family is subject to the will of the deceased. Therefore, although the goods devolve upon the family even without the presumed will of the owner, nevertheless, by a contrary will of his—at least one which has been lawfully declared—it comes about that the goods pass to others or are to be employed for another end.

II. PROOF

225. A. OF THE FIRST PART. Nature itself requires that there be among men some right of inheritance. For:

1) If this right were suppressed, the goods of the deceased would either be regarded as abandoned or be assigned to the fisc. The former, as is readily apparent, cannot stand with the peace and order which nature wills to flourish in the city. For there would be infinite desires, contentions, quarrels, and disturbances over occupying those vacant goods. Hence even modern law is accustomed to provide that immovable things which lack an owner should in reality pass to the fisc. But the latter, by which those goods would be assigned to the fisc, would soon introduce a community of goods such as, in the present circumstances of men, we have shown to be disapproved by nature itself. It remains, therefore, that nature sanctions some right of inheritance.

2) Furthermore, that form of property is sanctioned by nature which adds incentives to industry, labor, and thrift. But if there is no hope of leaving goods to one's relatives, who does not see that these pursuits will altogether languish?

226. B. OF THE SECOND PART. Indeed, as regards their substance, there seem to be sanctioned by nature:

1. Both the right of making a testament.

For, as Rev. Fr. Cathrein elegantly argues, if this right were suppressed, the good proper to the person, the family, and society, on account of which property is necessary, would not be sufficiently

obtained. Individual persons—at least those who lack children—would scarcely be incited to a frugal and industrious life;—the suitable accommodation of goods to the needs of the family demands a varied distribution of the patrimony: how will this be accomplished except by the testament of the parents, by which a salutary confirmation and sanction of paternal authority is obtained at the same time?—finally, among the expenditures through which riches benefit the whole society, expenses for a pious end or for general utility hold no insignificant place: but who would wish to set aside money for uses of this kind unless he could define by testament upon what work it is to be expended?

2. And the hereditary succession of the family.

For although we readily grant to Rev. Fr. Cathrein that, while the father of the family is alive, not even the children possess *per se* some part of the patrimony together with their father, nevertheless we contend that there is a natural substitution of the family into the place of the deceased owner. For:

a) At least in children, who does not see a natural continuation of the person of the parents? But does not this continuation of the person *per se* demand the continuation of the possessions which were joined to the person as something accessory?

b) Indeed, all blood relatives represent a common ancestor. Hence the moral unity of the family, a certain community of praise and reproach, of guilt and merits. Is it not easy to conclude from these things that there exists a certain society of patrimony, by which it comes about that, when the owner has died, these goods are to be assigned to those same blood relatives who, while the owner was alive, were—as all acknowledge—to be assisted from them before strangers?

c) From one patrimony are supported those who are most closely joined to the owner; and by the same patrimony it is chiefly brought about that the family obtains a definite rank in society. These things being posited: **α)** If hereditary succession is suppressed, unless provision has been made for the family by testament, the family will of itself be cast down from its rank. But ruins of this kind, as adverse to the common good, cannot *per se* arise from an order established by nature. Therefore, nature demands such an order in which there is hereditary succession of the family. **β)** Nor, when the owner has died, can these goods be said to be referred no more to the family than to strangers. For in act they were for the use of the family. But to the subjection of an inferior thing there corresponds a certain precedence of the person, a certain intention of exercising dominion, which, from being imperfect, passes upon the death of the owner into an absolute intention. To state it briefly: the goods were already so joined to the family that nothing seemed to stand in the way of true occupation except the prevailing right of the one by whom they were properly possessed. When this obstacle is removed, the occupation itself is perfected. Hence it can also be argued in this manner:

For the reasons given, from the personal conjunction with the owner and the very use of the goods, it is known that nature has brought it about that the family is in the preferable position as regards the patrimony of its ancestor, since his goods are already bound to the family itself by a special bond.

Since these things are so, when the owner has died intestate:

Either that bond must be broken, or it must be confirmed by succession being granted.

But the former is violent, is opposed to an order already established, and is contrary to the common good. It remains, therefore, that the latter is instituted by nature. Moreover, this is confirmed by the

fact that the use of a vacant thing, if the intention of an owner is added, is customarily a title of right (no. 215). Therefore, if, when the owner has died, those most closely joined to him wish to possess things already assigned to them in some manner, this will suffice for them to obtain a perfect title of right.

227. C. OF THE THIRD PART. Regularly, however, the right of the family is subject to the will of the owner.

This is readily evident, because he whose property the things are retains *per se* the complete faculty of disposing of his goods. It is also evident because, once the natural right of making a testament has been proved, in order that a contrariety of rights be avoided, one must be able to annul the other. But at first sight the right of the one to whom the things belonged is recognized as stronger than the right of those who manifestly held only the second place.

Yet we said *regularly*. For, by reason of the common good, most civil laws have circumscribed within certain limits this faculty of disinheriting; and nature itself already permits the most closely connected persons to set aside for themselves those goods which ought to have been left to them by a strict duty of piety. Cf. what was said in nos. 150-154.

228. III. Difficulties.

1. The right of inheritance is too indeterminate for it to be called a natural institution.

Reply. I deny. For although its perfect ordering is obtained only through positive law, *per se*, even before law, the right of making a testament, and also the right of children to enter upon the inheritance of their parents, is already sufficiently defined. According to these determinations, that right can, and indeed must, exist even before society has been constituted. For even if only the first part of the thesis stood, one could argue thus. An institution which is sanctioned by nature under a generic rationale truly has force, in the absence of positive ordering, in that sole mode in which it can be had *per se*.

But. In the absence of positive ordering, it cannot have force without testamentary attribution.

Therefore. In the absence of positive ordering, the right of inheritance certainly has force in this mode.

2. At least the right of making a testament is not *per se* necessary and consequently is not instituted by nature. For it is sufficient *per se* that someone can make a gift *mortis causa*, that is, make a donation which is confirmed only by death.

Reply. I distinguish the assertion: The right of making a testament is not so necessary that in many cases it cannot be supplied, at least in an imperfect manner, by a donation *inter vivos*, especially one made *mortis causa*, **C.**; it is not simply necessary in any case, nor is it *per se* required in order that the right of property be complete, **N.**

On account of this way of escape, we confess that something is perhaps lacking for a perfect proof of the second part, which for that reason we have presented only as more probable. Yet observe that a donation *mortis causa* requires that the will to give be manifested before death and that another person be present to accept the donation. Who does not see that these things sometimes cannot be done and are *per se* full of inconveniences and danger, both to the peace of the family and to the

liberty of the donor? And since these many evils can be met by the easy remedy of a testament, must it be thought that only that incomplete and dangerous mode of disposing was granted by nature?

3. It is repugnant to the right of property as nature instituted it that a transfer of a right be made without the simultaneous consent of the one ceding and the one accepting; that a cession of a right should have force which is perfected only after someone has lost dominion over the thing. **But.** By a testament, the right is transferred and ceded only after death, that is, when the very will and power have simultaneously departed. (Thus Zallinger and several others.)

Reply. I distinguish the major. A transfer and cession of this kind is repugnant to the natural right of property if it is made in a peculiar mode which is directly shown to be necessary for the end of private property, **N.** If it is made in other ordinary modes, **C.**

The adversaries employ this as though it were their principal rationale, and it must be admitted that several patrons of our opinion labor greatly in resolving it. For some reply that the consent of the testator perseveres morally and as regards the effect of the right;¹ others that acceptance is already present before death by presumption;² both of which replies seem to have little validity; and in the former, unless we are mistaken, the question is begged.³ Leibniz has recourse to the very immortality of the soul in order to demonstrate the efficacy of the will even after death! But if dominion is taken away by death, that immortality is irrelevant.

¹ Rev. Fr. Cathrein, *Moral Philosophy*, no. 403.

² Rev. Fr. Castelein, *Institutions of Moral and Social Philosophy*, p. 310.

³ Unless, however, as Rev. Fr. Cathrein does, you afterward confirm the principle by appealing to the necessity of the social order. Then this mode of replying differs from ours only in that it is less immediate and direct.

Yet we confess that we are little moved by this difficulty. For we know that this power over goods which is required for the end of property is attributed by nature. Hence, if the common conditions of alienations have no force in a testament, it will be for us an alienation *sui generis* which, nevertheless, for the reasons given, the natural law could and ought to have sanctioned (cf. Rev. Fr. Lehmkuhl, vol. 1, no. 1144); nor do we judge it worth the effort to seek subtly for a way of assigning this species to the genus of an ordinary transfer of rights. We put this forward with a more confident mind because, if we attend well, every faculty of alienating rests upon a similar rationale. For it is said to be granted by nature so that the end of private property can be efficaciously attained. Cf. no. 222.

4. The natural right of making a testament conflicts with the natural right of intestate succession. **Therefore.** These cannot flow from nature at the same time.

Reply. Unless one right is subject to the other, **C.**; otherwise, **N.**

5. The succession of children must be founded upon the presumed will of the parents. Otherwise: **a)** a testament would be opposed to natural law, at least one by which a great part of the goods was assigned to strangers; **b)** from justice itself, the family would be bound to pay the debts of the deceased beyond the value of the inheritance received. Yet this is commonly denied by theologians.

Reply. Together with the assertion itself, we deny both of its proofs which Rev. Fr. Cathrein objects to us in the fourth edition of his *Moral Philosophy*, no. 403, objection 4.

The former argumentation, indeed, already seems to be cut off by the third part of our thesis, no. 227, by which we made the right of the family subject to the will of the owner.

But the latter difficulty would not lack weight: **a)** if we had made the succession of the family to the goods of the deceased necessary, and not subject to a free option; **b)** if in the continuation of the person of the deceased and the representation of the ancestor there were an adequately sufficient rationale. But now: **a)** no less than the will of the deceased, a contrary choice by the family itself can impede succession. **b)** From the continuation of the person and the ordinary use of the goods, we showed only that the privilege of occupying the unclaimed inheritance before others belongs to the family. Therefore, by its own act—that is, by perfecting the intention of an owner which before the death of the ancestor was only imperfect—the family will make the goods of the deceased its own, certainly burdened with real debts, if there are any, just as by its own act it could also assume upon itself the burden of all the debts. And nature itself, on account of the personal bond by which children are joined to their parents, will not infrequently counsel that it discharge all of them.

But again, on account of his opinion by which he holds that every right of the family must be traced to the will of the deceased, Rev. Fr. Cathrein will perhaps not easily explain: **a)** how civil law can have so much force that, even against the will of the parent, it is valid for assigning a legitimate portion to the children; **b)** how among the peoples of Germany there long prevailed this persuasion: that no one was held to be an heir properly so called except him whom God (nature) had designated, according to the proverb: *God alone can make heirs, not man*. Cf. no. 223, p. 294, N.B., and no. 230.

IV. SCHOLIA

229. Concerning proper civil ordering. Besides those things which nature *per se* institutes in this matter, there are many things which it wills to be sanctioned by positive law. Hence, in those things which he establishes, the human legislator does not exercise free choice, but must take care that his decrees accord with the wishes of nature.

230. Disadvantages of the opinion of Grotius. Those who explain intestate succession only from a conjecture concerning the will of the deceased do not seem able to recognize that some portion to be allotted for the support of the family is reserved by nature itself. And in a matter of such importance, can a conjecture which is often uncertain and fallacious be sufficient? Cf. Taparelli, no. 779.

Section III. On the Limits of the Right of Property

St. Thomas, II-II, q. 66, art. 7; Molina, tract 2, disp. 3, and disp. 20, no. 14; Lessius, chap. 3, doubt 2, and chap. 12, doubt 12; C. de Lugo, disp. 2, sect. 1; disp. 6, no. 6; disp. 16, sect. 7; Carrière, *On Justice and Right*, nos. 17, 18, 269, 368, 1015-1020; Ketteler, *Sermons on the Catholic Theory of Property (Selected Works)*, edited by Decurtins; Waffelaert, *On Justice*, vol. 1, nos. 35, 40, 41; vol. 2, nos. 188-195; Cathrein, *Moralphilosophie [Moral Philosophy]*, vol. 2, sect. 1, bk. 4, chap. 4, art. 3, § 4, nos. 3-5, pp. 308-311, 3rd ed.; *Moral Philosophy*, no. 380; Castelein, *Institutions of Moral and Social Philosophy*, pp. 313-322; Pottier, *On Law and Justice*, diss. 1, sect. 2, chap. 6, nos. 25-29, 57-63; diss. 3, sect. 1, chap. 5, nos. 99-116.

Article I. Notions and Conclusion

THESIS XVI

The perfect right of ownership is circumscribed by those, and only those, limits properly so called which are posited by the right arising from another's necessity and by the jurisdiction whereby the public power can, indeed, neither abrogate nor directly restrict the right of private ownership, but can indirectly affect it insofar as the common good requires.

231. I. State of the Question. 1. THE TIMELINESS, INTENTION, AND PARTS OF THE THESIS. After the fortune of liberalism began to decline, there were those who, certainly with the best intention, attacked the notions and definitions of the right of property handed down until then, which they thought agreed very little with the evangelical principles concerning external goods. From this there sometimes arose controversies of no slight importance, which, being about words rather than things, could have been avoided if the proper meaning of terms had been preserved with a peaceful mind. Therefore, it will be worthwhile to inquire into a genuine description of the right of perfect ownership and the Christian rationale of that same right. We shall easily reach this goal, after the things which have been said, if we define the very limits by which that right is circumscribed. This, then, is the intention of the present thesis.

There are, moreover, three parts of our argumentation, which follow upon one another in such a way that we first establish that there are two limits, then that there are no others, and finally endeavor to define the genuine role of the State in this matter. This last is not without difficulty. For although all who opine rightly hold that not all things are permitted to the public power, they nevertheless omit to hand down a clear formula by which the legitimate use of authority may be discerned from the tyrannical usurpation of another's sphere.

2. OPINIONS. We rest upon the authority of the Scholastics, who, when they define this right, mention no limits other than those established by laws. For in other places they openly defend that right which we call the right arising from another's necessity.

Some more recent authors seem to opine as though, in addition, there ought to be numbered among the limits of human property both the right of supreme dominion which belongs to God and the duties of charity toward one's neighbor. Thus the illustrious Bishop of Mainz, Ketteler, loc. cit., p. 8, and Rev. D. Pottier, loc. cit., no. 61. If they have wished to speak precisely, they seem to us to abandon the proper meaning of words to no purpose. Yet it is evident that neither divine rights nor the duties of charity are in the least denied by us.

Opposed to the rationale by which we explain the force of positive laws in the third part are the "socialists of the chair," who make the right of private ownership directly subject to civil authority.

3. THE TERMS ARE EXPLAINED.

The perfect right of ownership, which contains within itself direct and useful ownership and all rights in a thing.

Is circumscribed by those, and only those, limits. Limits are those things by which a right is bounded in its own order, so that it cannot exercise its proper force upon its object *per se*. The proper force of a right,

moreover, is that, in relation to other men, it guarantees an inviolable faculty of having, doing, or omitting certain things. Cf. nos. 5, 7.

Properly so called, or perfect. For, in a broader acceptation, whatever takes away, indeed, not an inviolable faculty, but the licit use of an inviolable faculty, can be regarded as some kind of limit.

Which are posited. We deliberately employ this word to signify that another's necessity or jurisdiction is not so much a limit as a cause of limits. For as long as another has not employed his right or his jurisdiction, nothing from this affects the things which the owner of the thing can do.

Which are posited by the right arising from another's necessity. By necessity we understand the necessity of using another's things, whether the extreme or almost extreme necessity of strangers, or the grave necessity of those to whom support must be furnished by the owner out of piety.

Necessity is extreme if you need another's thing in order to avoid an evil equivalent to death and that evil is imminent; almost extreme if the evil is not so imminent, or cannot altogether be assimilated to the loss of life: for example, perpetual or most grave captivity, a long-lasting illness, perpetual debility, or grave positive infamy. Cf. C. de Lugo, disp. 16, no. 154.

Necessity is grave when a grave evil threatens which, nevertheless, can in no way be compared with death: a fall from one's station, or deprivation of the maintenance suitable to one's own condition.

N.B. The right of necessity, as is evident, is bounded by the necessity itself. Therefore, the thing must first be requested before it can be taken against the will of the owner. And if, in order to provide for yourself, you need only some use of the thing, it will be unlawful to consume or destroy it; nor will one for whom, on account of goods which he has in act or in certain hope, it is sufficient to borrow another's thing be permitted *per se*, or by the title of necessity alone, to take the thing except with the burden of restitution. *Per se*, I say. For not rarely the tacit or presumed will of the owner will relieve him of the burden of restoring the small value of the thing.

And by jurisdiction. We deliberately employ this word so that it may be evident from the outset that the right of the State is not of a rationale similar to the right of a needy man; that it is not some ownership, but must be referred to the public power of commanding, or the ordinary power of governing a perfect society. For this is jurisdiction, taken universally.

Whereby the public power, which governs a perfect society.

Can, indeed, neither abrogate nor directly restrict the right of private ownership. Thus we already signify negatively the extent of the right of the public power. It does not avail to suppress the regime of private possessions—and this is not ambiguous; it does not avail to restrict that right directly—and this rationale is less evident. To explain it: he would directly restrict it whose formal intention was to impose a measure upon private possessions or riches. *Directly*, therefore, here means the same as *immediately and for its own sake*.

But indirectly, that is, on an occasion taken from elsewhere, for the sake of something else—some good to be procured, some evil to be averted—which is immediately intended, so that the restriction is in the manner of a means, not an end.

Insofar as the common good requires. By these words we give the positive norm, namely, the good on account of which such a means (restriction) is legitimately employed. Cf. certain cases, no. 241.

II. PROOF

232. A. OF THE FIRST PART. The perfect right of ownership is circumscribed by those limits properly so called which are posited by:

1. The right arising from another's necessity.

For the right of perfect ownership contains the faculty of excluding all others from the use of one's own thing.

But. By the right arising from another's necessity, the owner is prevented from excluding certain others from the use of his own thing.

Therefore. The right arising from another's necessity posits limits properly so called.

The major is evident from the notion of the right of property; the consequence, from the notion of a limit just handed down. But because we wished this right of necessity to be twofold, that of strangers and that of the family:

a) The minor is proved as regards the necessity of strangers. Since external things, by the primary intention of nature, are destined for the use of all, the right of private property is not only, like any right, a means whereby the one having the right can pursue his personal end, but is also a means whereby external things themselves are applied to that use which is contained in the primary intention of nature, at least in such a way that no private property could derogate from this primary intention. For this, however, it is necessary that private possessions be subject to this law: that, when every other way is closed, each person can employ, as though vacant and unoccupied, things which are the property of another who is not in equal need, in order to provide for either extreme or almost extreme necessity, at least insofar as nature willed certain goods of a superior order to belong to each person more absolutely than it willed external things to become anyone's private property. We add this because the faculty of taking in extreme necessity extends more broadly than in almost extreme necessity, as we shall show immediately.

The major of this argumentation is evident from the fact that the primary intention or the end must be preferred to the secondary intention or the volition of the means.

As to the minor. For on the one hand, this primary intention regards the goods which nature willed to belong to all, and to the extent to which it so willed; that is, to speak more explicitly, the general ordination of external things to all men is a general ordination to those human uses of which nature willed to give all men an opportunity; but on the other hand, a true and serious destination of things to some end demands that the general destination be converted into a particular one where, in certain circumstances, that end can be procured by only one thing or one species of things. For the destination could be at once serious and general precisely because there was a choice among many things.

Since these things are so, it readily appears that the general but primary intention by which external things are destined for human uses becomes a particular and prevailing ordination of certain things to a particular person who, without them, could not provide for some good of his own as is granted to him by nature. This ordination, in turn, in order to be efficacious, demands the faculty of taking, and consequently denies to the owner the faculty of excluding.

Now the goods concerning which that primary intention exists are, first of all, those exposed to danger in the present life. For unless external things furnish someone with this fundamental benefit which is existence itself, they will in no way be able afterward to be useful to this person. Next, as C. de Lugo argues, there are other goods which are so closely joined to the natural condition of the human person that nature is proved to have willed them, at least *per se*, to be available to all men. Therefore, for preserving these goods, anyone will be able to employ ordinary means, setting aside another's ownership. He will therefore be able to take another's things for this purpose, but not in excessive quantity. Moreover, these goods are those which we indicated when explaining almost extreme necessity.

And thus we have now proved everything which we contended in the minor, except the exception indicated by the words *of another who is not in equal need*. Yet the truth of this is manifest. For if the owner himself is equally in need, he is then protected by the very primary intention of nature, so that he must be preferred simply.

b) The minor is proved as regards the necessity of the family. In relation to suitable support, the family stands in the same place with respect to the goods of the father of the family as men stand with respect to all goods in relation to extreme or almost extreme necessity. And in truth, since the volition of the use is prior to the volition of the right which is a means to the use, and the right of property is attributed to the father of the family also for discharging the duties of piety and consequently for furnishing suitable support to the family, nature willed the use of the goods for sustaining the family more than it willed the right of the father of the family over those goods themselves. On the other hand, by the very closeness of the persons, the disadvantages which are inherent in this invasion of a sphere *per se* belonging to another are warded off. Therefore, since the use is sufficiently defined, it is again sanctioned by nature, so that, when the father of the family fails in his duty, the family can take suitable support for itself. Cf. nos. 151, 154.

2. The right of ownership is also circumscribed by the limits which the jurisdiction of the public power posits.

For the jurisdiction of the public power extends to this: that certain things be withdrawn from private commerce; that certain modes of acquiring or transferring goods be rendered ineffective, either absolutely or in relation to certain persons; that citizens be prohibited from doing several things in their own property and be commanded to perform others (*servitutes legales* [legal servitudes]).

But. All these are limits properly so called of the right of acquiring things and the right of possessing them. **Therefore.**

The major is proved. It is already established by the perpetual and most approved practice of all nations. The same is, moreover, readily demonstrated by an intrinsic rationale. For:

a) External things and their acquisition are the matter of frauds, injuries, and evil arts, which it is *per se* the right and duty of the public power efficaciously to forestall. It will therefore be able so to order possessions and agreements that, insofar as this can be done, these evils may be met.

b) Rights over external goods are among those things which, on account of the lawsuits and discords to which they give occasion, and the disadvantages which certain modes of exercising them cause to others, most greatly demand that they be suitably reconciled and composed among themselves.

Prudently to temper mutual rights, so that peace may be made firm and citizens may live joined to one another by a closer bond, belongs *per se* to the primary sphere of the civil power.

c) External things ought to yield to the common utility of all, and the rationale by which they are possessed and divided contributes greatly to temporal prosperity and happiness. Upon the ruler, moreover, rests the care of the common utility and the office of directing society so that it may attain that happiness and prosperity. It is therefore his office to establish those things concerning external possessions by which those ends may be obtained.

233. B. OF THE SECOND PART. It is circumscribed by these limits alone.

For any other limits which could be imagined would flow either from the supreme right of God or from the non-juridical duties of those who possess goods. You will say that juridical duties also ought to be mentioned.¹ But the rights by which these duties are imposed either regard external goods, and then we are outside the supposition—for we are treating of perfect ownership, whereas those rights, if they exist separately, exclude the rationale of perfect ownership, since they are like parts severed from this ownership²—or they regard the superior goods of life and reputation, and then the limits which are posited by the necessity of preserving these goods have just been explained in the proof of the first part. There is therefore no place for a third hypothesis.

¹ Juridical duties are those which must be carried out on account of a right existing in another.

² “For it is one thing for a part of the right, as though integrating ownership, to be taken away from one person and conferred upon another, as happens when ownership of a field is bequeathed to one person and the usufruct to another ... but it is another thing, with no part of the right transferred to another, for someone to be impeded from such a use: for the first causes someone not to be the owner integrally and perfectly ... but the second does not take away anyone's being the owner perfectly, but only binds his right in whole or in part.” Thus Molina, disp. 3, no. 3. These things, therefore, are not to be confused; and one must adhere carefully to the genuine notion of a limit, that is, of a restriction or impediment by which perfect ownership of the thing is not taken away. Cf. Lessius, chap. 3, no. 9.

But. The right of perfect ownership is circumscribed by neither of the indicated sources. **Therefore.**

As to the minor. Not by the right of God. For, as we said at the beginning, no. 6, we are considering right among men; nor can a restriction common to every right be indicated as a limit of property. Moreover, that right of God does not so much posit limits as altogether take away our right of possessing. For we can oppose no right to God. Therefore, if we wish to speak precisely, with regard to divine right, usufruct (right)³ belongs to us no more than ownership does, but only a merely precarious use subject to the divine will.

³ Ketteler overlooked this when he thought that human possession contained the rationale of usufruct rather than ownership—as though a usufructuary converted the utility of the thing to himself less than an owner does, and could not oppose to the owner himself his own right of enjoyment. Therefore, by these improper modes of speaking, the cause of the poor is helped in no way. Nor does St. Thomas employ them, II-II, q. 66, art. 1, ad 1.

Nor is it circumscribed by *non-juridical duties*. For by these it comes about that a certain use is right or illicit. But a right is never said to be bounded by right use, especially since the obligation of using rightly does not take away the faculty of illicit use which is inviolable by men. The exception arising from the right of necessity was handed down above.

234. C. OF THE THIRD PART. The public power cannot abrogate or directly restrict the right of private ownership, but it is permitted only to affect it indirectly, insofar as the common

good requires.

1. It cannot abrogate it. For this right, more ancient than civil society itself, is sanctioned by the higher law of nature, nor is it among those rights whose exercise, like the right of vengeance, must be transferred to the public power on account of the common good.

There is added this second rationale: A just law is an ordination to the common good. **But.** A division of goods is required for the common good. **Therefore.** Even if this division had been introduced by civil law, or depended upon it as regards its first existence, it could not be abrogated by that law, or would not depend upon it as regards its preservation.

2. It cannot directly restrict it. For a direct limitation of a right bespeaks power over the right itself. But this power must be denied to civil society on account of the rationale just given.

3. But it is permitted only to affect it indirectly, insofar as the common good requires. Once direct power is denied, it remains that the faculty be indirect. Moreover, the rationale by which it can indirectly affect the right will be that which is furnished by the very formal office of the public power to procure the common good. How this is to be done, we gave above in the first part.

235. III. Difficulties.

1. He who posits limits to the right of property denies that it is absolute, which pertains to the rationale of property.—Thus, approximately, Spencer.

Reply. I distinguish the assertion. He who posits limits left to another's caprice denies perfect ownership, **C.** He who posits limits which right reason derives from a superior right denies an absolute right—*Subdistinguish.* Absolute, that is, which cannot be violated, **N.** Absolute, that is, uncircumscribed, **C.** But at the same time, I deny that the right of property is absolute under any other rationale except that, within the limits legitimately posited, it cannot be violated by any man or ruler.

2. There is no right of doing an act which is repugnant. **Therefore.** Every duty posits a limit.

Reply. I distinguish the antecedent. There is no right granted *per se* for those acts, **C.** There is no right which *per accidens* extends even to acts of this kind—*Subdistinguish.* There is no right in such a way that those acts become licit, **C.;** in such a way that they are valid and cannot be impeded by other men, **N.**

As we said in no. 152, the common good not rarely demands that a faculty which someone abuses nevertheless cannot be violated by men. And because a right is spoken of in relation to men, under this rationale there is sometimes a right to acts which conflict with duty. Yet the right was granted *per se* for good acts.

Article II. Supplements to the Doctrine

I. COROLLARIES

236. Definition of the right of property. From the things which we have discussed, it follows that the perfect right of ownership, such as belongs to men, is rightly defined: *The right of perfectly disposing of a corporeal thing, unless prohibited by law.*¹ For this definition, given by Bartolus, and, having become

common among jurists and having been approved also by Molina, disp. 3, no. 1, Lessius, chap. 3, no. 7, and C. de Lugo, disp. 2, no. 3, gives the genus—*right*—and the species by accurately describing its remote matter, which is a corporeal thing, and its proximate matter: free disposition of the thing, except for legal limits. Hence we have the very scope of the right declared positively and negatively. Nor is it an objection that the right of necessity is not mentioned, since this is present only rarely and *per accidens*.

¹ Rev. D. Pottier does indeed retain this definition verbally, diss. 1, no. 57; but when, at no. 60, 4°, he wishes “law” to be understood also as natural law, he in reality attaches to it a meaning foreign to the truth and altogether new. Cf. Molina, Lessius, de Lugo, etc., and it will immediately appear that they, no more than the jurists, thought of any law other than positive human law.

Another sufficiently received definition has the same meaning: *The right of disposing, for one's own advantage, of the utility and substance of a thing, within the limits established by just law*. This perhaps more clearly separates the ownership of property from the dominion of jurisdiction, which is the right of disposing, not for one's own advantage, but for the common good. In the former definition this was signified by the word *perfectly* and by the object, *a corporeal thing*. On the other hand, because property, which permits use for one's own advantage, does not deny the faculty, and indeed the duty, of providing also for others, we prefer the word *perfectly* to the words *for one's own advantage*, from which all ambiguity is not absent.

With the same definition agrees the celebrated description of a certain unknown Roman jurist: *The right of using and consuming insofar as the rationale of right permits*. For the thing which serves as the object of the word *consuming* is not an evil use, but the use by which the thing is consumed or extinguished.

Thus Cicero, in the *Topics*, denies to a woman to whom her husband had bequeathed the use of his goods the faculty of draining the wine cellars: “For use, not consumption, was left”; thus things which are consumed by their first use are said to consist in consumption;² nor does canon law speak otherwise: “But *to consume*, when consumable things are being treated, is taken for the consumption of the thing, which is opposed to that which is *to use*” [chap. *Ad conditorem*, 2, *Extravagantes of John XXII, On the Signification of Words* (XIV, 3)]. Very inappropriately, therefore, has this definition been rejected by some.

² Cf. law 5, § 1, D., *On the Usufruct of Those Things Which Are Consumed by Use*, etc. (VII, 5).

237. The Christian rationale of the right of property. Just as the customary rationale of the marriage contract itself, which nevertheless became a sacrament, was preserved in Christian law, so the formal rationale of perfect ownership was changed in no respect by the Gospel itself. But the Christian rationale differs from the pagan, liberal, or rationalistic rationale in this: that through it:

1. The source of right is placed, not, as is done by the rationalists, in ourselves, but in the provident God, who joined right with duties. Cf. St. Thomas, II-II, q. 66, art. 1, ad 1.
2. Contrary to the liberal rationale, the right is referred not merely to the individual person, but the social end is positively inculcated, whereby the ownership of things has been ordained by the divine intention to the good of the family and of the whole city,³ and indeed also of the human race.

³ According to St. Thomas, private property procures three advantages for the city, and therefore is necessary: a greater abundance of goods on account of more solicitous care; greater order on account of the division of labor; and greater concord and peace on account of the sanctity of right. Cf. II-II, q. 66, art. 2.

3. A humble enjoyment of the right is commended to men, and, once the vanity of riches has been manifested, all are impelled to be detached in affection from these vain things. That these things may be established more efficaciously, the Catholic Church at the same time presents in not a few of her children a perpetual example of the voluntary practice of poverty. Hence it comes about that she obtains ready gifts of money from the rich and a blessed resignation and quiet of soul from the poor, which is accustomed to contribute so greatly to the concord and happiness of souls. And in this manner also, if her precepts were better heeded, the evils and vices by which present-day society is infected would depart, as though without effort, torn out by the roots.

The Christian rationale, therefore, affects the right less than its use; it changes ownership less than the owner himself.

238. The common destination of all endowments and gifts. Not only do those things which were first destined for all become private under this law alone, that in this manner they may better serve the common utility, but also other things of which we have an innate property: talents, I say, and every kind of gift, are to be dispensed for the good of all, as God so ordains. This is openly handed down to us by St. Peter, First Epistle, chap. 4, v. 10: "As each one has received grace, administering it to one another, as good stewards of the manifold grace of God"; recently this was again inculcated in this manner by Leo XIII: "The substance is this: whoever has received a greater abundance of goods by the gift of God—whether they be goods of the body and external goods, or goods of the soul—has received them for this reason: that he may employ them for his own perfection and likewise, as a minister of divine Providence, for the advantage of others." Encyclical *Rerum novarum*. Cf. St. Thomas, I, q. 96, art. 4, in the body.

Here, however, it appears again (cf. no. 209) that external things become one's own under a rationale different from that under which powers, faculties, and talents were one's own from birth. For, as though a vestige of the first ordination of external things, there remains the right of taking them in extreme necessity (no. 232), while one's neighbor, even when laboring under extreme necessity, cannot by justice claim for himself any use of the faculties or powers which inhere in our person. Therefore, if, when you easily can, you deny personal assistance to your neighbor in these straits, you will have committed an enormous sin against charity, yet you will have been guilty of no injustice; nor can you be strictly compelled by the needy person.

But from this an objection can be made against the right of necessity itself. For what the needy person generally requires is not a thing such as it is from nature, but the fruit of another man's industry: bread, grain, money, etc. How does it come about that, against the will of the owner, a thing of this kind can be appropriated? Therefore, unless we are mistaken, the rationale of the right of necessity must be developed in this manner: after the division of things has been made, since in practically all things by which a needy person can relieve extreme want there is at once some natural utility and some human industry, and since both are indivisibly joined, nature permits private possessions of things under this law: that their owners concede, in extreme circumstances, the appropriation even of the fruits of their industry which are annexed to external things. Otherwise, the right of extreme necessity and the very assignment of natural things to the common good would turn out altogether void.

239. Acquisition from necessity. The things which, by reason of necessity, either any neighbor or the family has the right to seize do not belong to those persons until they have occupied them in fact.

Therefore, the father of a family who dissipates things which he was bound out of piety to furnish to the family is not guilty of injustice; nor is he who conceals from an extremely needy poor person, even by using a lie, that he has goods. Nor, from what was just said in no. 238, is it a duty of justice positively to furnish assistance to a needy person. Cf. de Lugo, disp. 16, no. 143.

Some, however, oppose this conclusion, and these words of the Encyclical *Rerum novarum* seem to favor them: “These are duties, not of justice—except in extreme cases—but of Christian charity.” Yet it is not likely that the Supreme Pontiff wished by these few words to disapprove the doctrine which C. de Lugo openly defends and St. Alphonsus judges to be the more probable and common doctrine (bk. 3 [4], no. 520).

240. The error of more recent jurists. Not a few of the more recent jurists, when they observe that the regulation of private possessions has varied together with the times, think that the very rationale of the right is one thing in one age and another in another age. But in this they are deceived, confusing the limits, which must be posited differently in different societies, with the very substance of the right, to which the definition which we handed down has always been fitted.

241. What the State can or cannot do in the regime of private property it is useful to illustrate by several examples, which appear true from the formula proved above in the thesis.

It is not permitted to the ruler to suppress private possessions, even of immovable things; nor to define a maximum sum beyond which citizens are prohibited from increasing private riches; nor to impose taxes for the end of making fortunes more equal by taking from greater means; nor, except for a public cause, to despoil anyone of just ownership; nor to restrict to a certain number of years the ownership of things which either were given by nature as one's own (the fruits of industry) or were acquired without such a condition. For these things cannot be done without direct power over the right itself, which we have denied to the State.

Nor does it belong to the State, at its own judgment, to practice trades or distribute goods. For these affairs are by their nature of a private rationale.

It can, however, insofar as this seems to be required for the common good according to the condition of the city, withdraw certain things from private commerce (public ownership, legal monopoly); set a limit to the portions of national soil which one person can possess, so that the land of some nation may be divided among many citizens or with sufficient equality;⁴ prohibit or prescribe certain things concerning possessions—for example, that people not build higher, that they tolerate an aqueduct, etc. (*servitutes legales* [legal servitudes]); prohibit suspect acquisitions of money (games, wagers, base contracts); attach new conditions of capacity and solemn form to the modes of acquiring or losing goods (testaments, donations); establish new modes of acquiring (treasure, prescription, as most authors hold); and provide by laws that the price of certain things be equitable, and that there be available *per se* to all who wish to devote themselves to work the opportunity of obtaining that condition of life which, according to the civil culture and common prosperity, can belong to all.

⁴ Safeguards of this kind are contained in Hebrew law, with St. Thomas approving, I-II, q. 105, art. 2, ad 3.

242. Concerning taxes and the eminent domain of the State. From what has been said, it also follows that the faculty of exacting taxes, and the dominion which is called eminent, must be ascribed to the same jurisdiction. For the rationale of eminent dominion or eminent domain, properly so called, consists in this: that the ruler can, if the common good requires it, take away a private

possession from a citizen.⁵ Yet this must not be done rashly; and, that this burden may be distributed equitably, the damage inflicted must *per se* be compensated with money.

⁵ In French we say: *expropriation pour cause d'utilité publique* [expropriation for a cause of public utility].

II. SCHOLIA

243. The power of the Church. Just as the State, for procuring the end of civil society, possesses jurisdiction over the goods of citizens, so the Church, under the formal rationale by which she directs the assembly of the faithful, can govern the goods of Christians; and, for a just cause, she can impose upon them taxes and restitutions, or prohibit certain suspect practices. Hence the laws concerning pious causes, the sanctions concerning simony, usury, etc.

244. You will ask how certain prodigal promises can be regarded by St. Alphonsus as invalid, if the right of ownership is bounded only by the right arising from another's necessity.

Reply. Another cause is present here: a defect of consent on account of the passions by which a man is accustomed to be led to these extravagances.

Similarly, we excuse, not by some limit of the right, but by the presumed consent of the owner, a certain momentary force by which the owner is prevented from a certain use concerning which it is foreseen that he will soon regret it. Cf. no. 154.

245. You will ask whether positive law ought to recognize the right of necessity.

For modern laws are silent, and therefore are reproved as unjust by Rev. D. Pottier. Yet it does not seem necessary that laws, which concern things that occur for the most part, should formally except such infrequent cases from the general disposition, especially since their express mention would perhaps loosen the reins more than is proper for not a few who would seek by these excuses to cover their frauds. Nor on this account are innocent persons to be condemned by judges. For even if magistrates today cannot bring forward this brief rationale—that a thing taken in extreme necessity is not another's—more than one way remains for magistrates to acquit defendants of this kind.⁶ It would be more expedient still, for forestalling these difficulties, to permit judges a greater use of *epikeia*.

⁶ You have these ways learnedly set forth in the articles *Le pain volé* [*The Stolen Bread*], written by D. de Lantsheere on the occasion of a celebrated case which was adjudicated in France. Cf. *Revue sociale catholique* [*Catholic Social Review*], vol. 2.

A Remaining Minor Question: On the Ownership of a Published Book and a Disclosed Invention

C. de Lugo, vol. 2, disp. 26, no. 171; Kant, *Von der Unrechtmäßigkeit des Büchernachdrucks* [*On the Unlawfulness of Reprinting Books*]; Carrière, *On Justice and Right*, nos. 55-62; Marrès, *On Justice*, vol. 1, nos. 23-25; Waffelaert, *On Justice*, vol. 1, nos. 171-173; Cathrein, *Moralphilosophie* [*Moral Philosophy*], vol. 2, sect. 1, bk. 4, chap. 4, art. 4, p. 319, 3rd ed.; *Moral Philosophy*, nos. 385-387; Aubry and Rau, *Droit civil français* [*French Civil Law*], vol. 2, p. 171, note 8; Wauwermans, *Le droit des auteurs en Belgique* [*The Right of Authors in Belgium*].

THESIS XVII

The right by which a writer or inventor can prohibit others from republishing a published book or imitating his invention must be ascribed to the genus of property.

Moreover, that right seems to be derived from positive law, the chief provisions of which are consonant with natural equity.

246. I. State of the Question. 1. THE OCCASION OF THE QUESTION. After the art of printing had been invented and a new source of profit had been opened from the very publication of a work, it was natural to investigate what, against the will or without the knowledge of the writer, others could licitly do in this matter without injury. The question was delayed for some time, however, on account of the various privileges which, together with the necessary faculty of publishing, afforded publishers security from rivals. But after the impediments were suppressed and a general license was granted for printing and selling anything, there arose, not very long ago, a sufficiently sharp disputation concerning the right or *ownership of writers*. No one, moreover, is unaware how it is sanctioned by the positive law of almost all peoples that, for a definite time, the writer alone, or those who have the right from him, may translate the work or commit it again to the press. Indeed, provision has been made by treaties that this privilege should be held sacred even among foreign nations. Those who make graphic representations (*dessins* [designs]) are also accustomed to enjoy a similar benefit of law.

Not dissimilar is the question concerning *inventions of the arts and sciences*: whether it is permitted to imitate another's invention—for example, a remedy, a liquid, a machine, a better method of an art—or whether, on the contrary, there belongs to the inventor over all these things the inviolable *industrial property*, as they say, which, at the beginning of the French Revolution, was promulgated by a solemn decree of the council called the *Assemblée constituante* [Constituent Assembly] and confirmed by the sanction of law.¹ Thereafter, the nearly universal custom grew of granting, upon the payment of some money as though a tax, patents (*brevets d'invention ou de perfectionnement* [patents of invention or improvement]) for a certain number of years, by which a monopoly of the art or method devised by him is established for the inventor.

¹ "Considering that every new idea whose manifestation or development can become useful to society belongs originally to the one who conceived it, and that it would be to attack the rights of man in their essence not to regard an industrial discovery as the property of its inventor ..." (December 31, 1790-January 7, 1791).

Not only has the same right as was attributed to writers of books been granted to musicians and playwrights, but legislators, proceeding further by the same path, also began to prohibit those plays from being performed in public or recent musical works from being performed unless the authors consented; they are accustomed to grant this permission for an agreed payment. Concerning this, again, one can ask what judgment should be made.

Finally, recently, after the art of photography was made public, it was disputed whether or not it was permitted to depict and sell the image of a person against his will.

2. THINGS WHICH ARE ESTABLISHED IN THIS MATTER. a) The right of a writer over a manuscript work, and of an inventor over an art or method which he wishes to use and enjoy in secret, is manifest. Therefore, he would be guilty of the most evident injustice who, employing fraud or force, should steal and divulge the secret or publish the writings of another.

b) Nor is it disputed that an owner has the right to reserve the fruit of his own genius for his own utility—yet only so far as, Carrière shrewdly observes, no. 55, “the nature of the thing permits.”

c) It is also sufficiently agreed that the laws by which there is attributed to writers and inventors the privilege of gaining profit from the publication of a book or an invention are most just and agree exceedingly well with the wishes of nature.

The question, however, concerns the *genus* of this right: whether or not it is a certain property; and its first *origin*: whether it proceeds from human law or from nature itself.

3. OPINIONS. a) **Among the ancients** the question was rather unknown. Yet the few documents which they have left us seem to give little support to the claim that the right of writers is natural. Thus St. Augustine² denies that another's property is taken away by one who commits to memory a sermon composed by another and recites it to the people in church.

² *On Christian Doctrine*, bk. 4, chap. 29 (Migne, P.L., vol. 34, col. 120).

Molina and C. de Lugo, who already touch upon the present question in some manner,³ regard the right of writers and inventors as a privilege granted by the ruler for a most just cause, “for fostering the zeal and industry of authors and printers ... as a reward for their invention.”

³ Molina, vol. 2, disp. 345, no. 3; C. de Lugo, vol. 2, disp. 26, no. 171.

b) **More recent authors**, who weigh the matter deliberately in the balance, have gone off into various opinions.

α) Not a few, who treat only of writers of books, think that this genus of property is sanctioned by nature itself. Thus Ballerini-Palmieri (*Opus morale* [*Moral Work*], vol. 3, pt. 1, chap. 2, no. 115), Rev. Fr. Cathrein, loc. cit., Rev. Fr. Lehmkühl (*Moral Theology*, vol. 1, no. 904 ff.), d'Héricourt (in Carrière, loc. cit., no. 59), and Wauwermans, op. cit.

Among them, some circumscribe the strict right to the profits of the first edition. This opinion of the Most Illustrious Bishop Waffelaert, loc. cit., is pleasing to Génicot (*Moral Theology*, vol. 1, nos. 477-478).

β) Others think that all things are to be derived from positive law, which they acknowledge to be consonant with equity. Among these are Rev. D. Marrès, loc. cit.; Rev. Fr. Bucceroni (*Moral Theology: On Justice*, no. 32 ff.); and Aubry and Rau, loc. cit.

γ) Others arrive at various distinctions.

There are those who, like Charles Comte (in Carrière), having rejected what they call industrial property, defend as proceeding from nature a certain special right of authors, different from property and equivalent to a temporal privilege.

Kant, op. cit., thinks that pirated editions violate, indeed, no property in the book (the work), but the innate property in actions (labors). Therefore, while he permits the imitation of things made by art (*Kunstwerk*), he condemns to restitution one who, without the writer's consent, has committed another's book again to the press. We shall meet his rather subtle rationale when we resolve the difficulties.

δ) Carrière sets forth his opinion in this manner: "Among those opinions, it seems most difficult to us to determine anything; for if the things brought forward on either side are read attentively, it will be manifest that many things either presuppose precisely what is in question, or are asserted altogether gratuitously."

c) **To us, those rights of writers or inventors:** α) Have a certain rationale of property; β) Indeed accord with the wishes of nature, but are first instituted by positive law. We shall attempt to establish this by the two parts of the thesis.

4. THE TERMS ARE EXPLAINED.

To be ascribed to the genus of property, and not to some other peculiar rationale.

The right by which a writer or inventor can prohibit others from republishing a book already made public or from imitating his invention. By these words we describe the right so that the faculty which is in question may be plain. Leaving others aside, however, we take the two principal species, books and industrial inventions, which we think stand upon an equal right.

Moreover, that right seems to be derived from positive law. We therefore assent, as more probable, to the opinion of those whom we cited under letter b, β.

Its chief provisions, lest we appear to approve every single prescription of the laws.

Are consonant with natural equity: we mean that equity which, apart from a positive sanction, does not constitute a debt of justice and pertains rather to the virtue of friendship, although an act can become necessary from charity.

II. PROOF

247. A. OF THE FIRST PART, which concerns the NATURE OF THE RIGHT.

Every faculty of ordering the substance or utility of some thing to one's own good, with others excluded, belongs to the genus of property.

But. Whatever right is assigned to a writer or inventor so that they alone can gather some temporal fruit falls under this genus. **Therefore.**

The major is established from the notions of ownership and property handed down above. Nor, from what we have said, is the truth of the minor any less evident. Therefore, we judge that those who have spoken against that part either differ in word alone and not in reality, or are deceived by an imperfect notion of property.

248. B. OF THE OTHER PART, concerning the ORIGIN OF THE RIGHT.

1. Moreover, that right seems to be derived from positive law.

For we establish that it cannot be ascribed to natural law:

a) **From the matter of the right of property.** For external things of which there is natural property are of such a kind that they can be joined so truly to some person that, by taking hold of them, fortifying them, and physically occupying them, that person, unless overcome by a greater force, efficaciously excludes others and prevents them from the same use. Therefore, we have said that some fact is prior to the very right of ownership: I mean the physical subjection of the thing or a use

that is not common (no. 215). And what, finally, is the very right of ownership, unless the moral inviolability of the physical bond by which a thing is referred to the good of one person and in fact “serves” him alone? What is effected by that right, unless that you may safely interrupt the physical detention of the thing which nevertheless always remains in your power? Hence wild beasts enclosed within overly spacious enclosures are not judged to have been appropriated; hence also an owner's rights in his own thing do not extend to those things which cannot physically be vindicated. Thus, for example, the owner of an estate cannot, unless a wall has been erected, prohibit others from surveying his goods with their eyes.

But, apart from the protection of law, it is altogether impossible that the writer of a book which has been published should at the same time retain the copies in such a way that force must be inflicted upon his own person in order to commit them again to the press. He who contends this could equally well, as Rev. Fr. Bucceroni argues, after making known the discovery of a star by him, demand that others should not dare, against his will, to look at that star.

Rev. Fr. Cathrein indeed says⁴ that this notion of property is too narrow, since it cannot be transferred to reputation. But there is nothing surprising in the fact that the notion of the property of corporeal things does not strictly hold for incorporeal things, such as reputation. Besides, a man does not *per se* lack means by which, even apart from civil protection, he may physically defend his reputation, preserve it unimpaired, and recover it when taken away, so that it is lost to an innocent person only *per accidens*. Reputation, moreover, is of itself assigned to us, while external things do not become ours except through positive occupation.

⁴ *Moral Philosophy*, no. 387, obj. 4.

The praised writer also attacks the comparison with the star, because positive law cannot grant a right that others should not look at the star against the will of its discoverer.

But for what other reason can it not do so, except because the command would be ineffective of itself? But if, where legal protection is of itself nonexistent, there is also no positive right, must it not likewise be said that there is no monopoly of natural right where, without public protection, there can be no physical defense of it?

Nevertheless, we do not wish to press too far the force of this comparison, which we have borrowed from Rev. Fr. Bucceroni.

b) From the right acquired by the buyer. Through the purchase of a copy, ownership of the book is so acquired that every use is judged just of itself unless that faculty is proved to be legitimately excepted.

But. A repeated edition of a book is assuredly some mode of using a copy. Nor is the exception proved. Where, as Kant rightly argues, is the formal stipulation concerning this matter? Where, I add, is even a tacit one, at least apart from positive law, when the will to prohibit this use universally would be plainly ineffective and in no way reasonable?⁵

⁵ The adversaries tacitly acknowledge the force of this argument by employing strange distinctions which are plainly gratuitous. Let these few words of the distinguished d'Annibale, for example, be read: “Although a secret is as though another's thing, nevertheless, once I have learned it, the knowledge of the hidden thing, as though a certain truth (which pertains to the intellect), becomes something of mine; therefore, I am not prohibited from using it without the

unjust harm of another.... But if it is some invention of science or art, because whatever we discover with study and labor is something of ours, I think that my using it against the other's will is like theft." *Summula*, vol. 2, no. 272.

c) From the limits within which the privilege of writers and inventors is contained. If the right were natural, it would of itself confer a stable and perpetual property which would equally have to be observed by all.⁶ On the contrary, the privilege of which we are treating is everywhere intended to be circumscribed by a certain number of years. Nor do those who think the right natural disapprove of an edition made in a sufficiently remote region, and they are even more doubtful concerning a translation into another language. Nor should you say that this right is limited to a certain number of years by positive law. For from the preceding thesis we hold that it is not within the power of the State⁷ thus directly to circumscribe the natural right of ownership; and it would be a thing full of danger to permit the State this. And here it would be a question of limiting the most sacred natural right which each person has in his own works or the fruits of his industry.

⁶ By the very fact that he admits that the right of an author becomes uncertain and doubtful after a longer time, Rev. Fr. Cathrein (*Moral Philosophy*, no. 387, obj. 2) seems to us to demonstrate that this right does not arise from nature alone. For it does not appear by what quasi-intrinsic defect a natural monopoly of the publication of a book would perish after a certain number of years. The rationale of equity by which the public power is moved to procure for an author even some temporal monetary gain from his labor certainly becomes smaller.

⁷ In reality, several adversaries seem here to have sufficiently forgotten the limits by which they themselves confined the right of the public power.

Our opinion is confirmed by the fact that men of unblemished reputation and scrupulous conscience transferred almost entire works of others into their own works, even omitting an indication of the source, so that they seem to have regarded doctrine once made public as a common good of the human family. Thus St. Bonaventure, in his commentaries on the sacraments, copied many things word for word from Richard of St. Victor. And, before treaties were entered into, the custom of producing pirated editions of writers of another nation had become sufficiently prevalent in Belgium and elsewhere that it can be said that these practices were not reprov'd by the common sense of justice.

2. At least the chief provisions of laws of this kind are consonant with natural equity.

For by these laws it is brought about that a fitting reward is obtained for useful labor; that, without common detriment, the fruits of industry, meditations, and perhaps prolonged efforts accrue more fully to the one who made them; and that new incentives are thus added for cultivating the arts, sciences, and letters. Finally, the very arguments soon to be answered make for this, by which some were moved to judge that the right was constituted by nature itself.

249. III. Difficulties.

1. FROM THE AUTHOR'S LOSS. For:

a) By those pirated editions it is brought about *per se*: **α)** That the writer and publisher, against their will, are deprived, at least in part, of the fruit of their industry; **β)** Indeed, that they do not even receive a fitting wage for the labor expended. **But.** These things of themselves are opposed to justice. **Therefore.**

Reply. *I distinguish the major.* By those pirated editions it is brought about *per se* either that, through unjust arts, the writer and publisher lack some profit, or that they lack the fruit and wage to which

they have a right, *I deny*. That they are deprived of gain, but without injustice on the part of the mode or the object, *I pass over*.

For it is not enough to show a diminution of gain in order to argue injustice, but you must prove a violation of right. We deny that the writer's monopoly is natural, that this wage is of itself owed from justice, and that a new edition of the book is a fraud unjust of itself.

Let others have judged otherwise: as far as we are concerned, they may; but in these and similar arguments the principle is merely begged. That which is called into question is assumed. It is certainly open to everyone to try his fortune and to seek honest gain; yet he who chooses a less suitable means, or for whom the matter turns out otherwise, even if he has perhaps at the same time looked to the common good, will himself bear the loss, and he will not be able to lodge a complaint against rivals that he has suffered an injury from them. What if few should buy an excellent and useful book? Will you judge justice to have been violated, or the loss to be repaired from the public treasury?

Moreover, especially as regards the writer, can he not expect another fruit of his labor, more certain and more excellent: the fruit of communicated truth, the fruit of reputation and praise, whence the way to honors is not rarely prepared?

b) If that right is denied, who would wish to give labor to writing books, to incur the expense of publishing a book, etc.? **But.** A right without which such useful labors would languish proceeds from nature. **Therefore.**

Reply. I deny the major. I pass over the minor.

For through so many centuries writers lacked this kind of gain, yet they were not therefore fewer in number. How many even now write without any hope of gain, moved either by a higher end or by the desire of obtaining praise!

Not every hope of fitting gain is taken away from the publisher himself. For those who, protected by no safeguard of right, produce pirated editions seek gain. Are not books whose privilege has expired also published daily? Therefore, merely passing over the minor, these things at most prove the fittingness of a law which gives origin to this right.

2. FROM THE TACIT RESERVATION OF THE RIGHT.

a) A work has not been made public except for the customary and ordinary use of the copies. **Therefore.**

Reply. *I distinguish the antecedent.* With a law posited by which an extraordinary use can be efficaciously prohibited, *I concede*, or *I pass over*; apart from a law of this kind, *I deny*.

For of itself it is open to you to make any use, even an unusual one, of a thing whose ownership you have acquired. With the law posited, however, we have merely passed over the assertion, because we have not yet spoken of the force for binding conscience which is inherent in these decrees.

b) It is open to the owner of a thing to sell it to others under certain conditions only. **But.** In selling copies, the publisher of a book does not intend to transfer the right of publishing it with type; indeed, today the reservation of that right either in set words in the book itself is expressed or is

tacitly understood to be added.⁸ **Therefore.** The right of publishing the book is retained by the publisher or writer.

⁸ In the familiar formulas: *Tous droits réservés* [All rights reserved]. — *Das Recht der Uebersetzung wird vorbehalten* [The right of translation is reserved], etc.

Reply. *I distinguish the major.* Provided those conditions have been agreed between buyer and seller, or have been brought into the agreement, *I concede*; otherwise, *I deny*. For of itself, every power which is contained in the right of ownership is acquired by the buyer. *I divide the minor.* As regards the intention, I deny that it is efficacious of itself, since it conflicts with the ownership granted, which of its own nature contains the faculty of every use. As regards the custom of today, those formulas customarily employed have this purpose: that the writer or publisher make manifest the intention of using the benefit of positive law. Hence we judge that this pertains little or nothing to the present question. For the easy distinction returns: From the custom of today there is a reservation of a natural right, *I deny*; of a legal or positive right, *I concede*.

3. FROM THE PUBLICATION OF THE BOOK FORMALLY CONSIDERED.

a) He who publishes a book without consulting the writer conducts the business of the latter against his will. **Therefore.** He must make good to the owner every loss and repay the gain made from the pirated edition. Thus, approximately, Kant, op. cit., who adduces this confirmation of the antecedent: A book is formally the speech of the writer to readers. Therefore, the publisher of the book necessarily presents himself as the one through whom the writer addresses men. But this is necessarily to conduct the writer's business.

b) A rationale not dissimilar is brought forward when it is said that a person's right to define in what way and manner his own thought of mind is to be communicated is innate; this right is violated by a pirated edition through which his discourse is accustomed to spread among the public otherwise than the writer had intended.

Reply. To a), *I distinguish the antecedent.* He who publishes a book without consulting the writer conducts the latter's business, insofar as he necessarily acts in the latter's name, *I deny*; insofar as he usurps the writer's right, *I subdistinguish*: If it concerns a written manuscript, *I concede*; if it concerns a book already made public,

I deny. This would have to be proved. And to the confirmation, I distinguish again: A book published by the writer is formally his speech to readers, *I concede*; a book published without the writer's consent, *I deny*.

Two things must especially be distinguished here: it is one thing to write something; it is another to communicate what has been written to others. These causes are distinct by their nature and consequences. Just as from the beginning I can write many things while thinking nothing about publication, so, after the work has been completed, I am able to cast aside the plan of publishing. Therefore, one who publishes a book without consulting the writer does not even always do what the writer at least wishes to be carried out either by himself or by another. Yet in order that there be the writer's speech to readers, it is necessary not only that he have written certain things, but also that he wish, in these circumstances, to hold discourse with readers concerning them. For every act of speaking, besides the thing thought, bespeaks a formal intention of speaking. Therefore, in reality, when the publisher is someone other than the writer, the publication of the book is never the

business of the writer alone. For if he has made the work public with the writer's assent, the publisher, just as he comes into a share of the merit, so also must in part, apart from a special provision of law, take upon himself the disadvantages that will follow; but if he alone has done it, he alone will be responsible for these things, and no one will doubt that he acted in his own name and at his own risk.

The obvious comparison also makes for this. Is he who reports words spoken by another always judged to act in the latter's name? Why, therefore, should this management of business be ascribed to him who communicates another's writings?

You may add that too much is proved by this Kantian argument. For from it a perpetual privilege would have to be assigned to the writer; and he who now publishes Cicero, Aristotle, etc., would always have to be judged to conduct the business of those ancient authors.

To b), at first sight this easy distinction occurs: It is yours to define in what way and manner a thought of mind is to be made public, so long as you have not made it public, *I concede*; after you yourself have already disseminated it among the public, *I deny*. Otherwise, you could equally prohibit others from telling again a thing which you have narrated openly, from handing a book to others to read, from copying out a passage, etc.

4. FROM THE MERIT OF THE ONE WRITING THE BOOK.

He who writes a book deserves well of the republic. **Therefore.** He has a right to the wage which he will obtain by means of this monopoly.

Reply. I pass over the antecedent (for there would be need of a distinction). I deny the consequence. Deserving well of itself gives rise to a duty of gratitude, but not of strict justice.

IV. SUPPLEMENTS TO THE DOCTRINE — COROLLARIES

250. Concerning the obligation of conscience. 1. Beyond what the laws establish, no prohibition can be pressed, at least from justice, whether of translating a book into another language, of publishing it again, or of imitating some invention. *At least from justice*, I say; for those practices often give a just cause of grief and sadness to the writer or inventor, so that charity can be gravely violated, for example, if someone is thereby cast down from a reasonable hope of gain, or if for some other reason he gravely objects to a work, sermon, etc., being committed to the press.

2. It is sufficiently agreed among theologians that a true right is attributed to authors by positive laws, so that he who acts against them is to be condemned as guilty of injustice and, without awaiting the judgment of a judge, must make good the loss caused by his own fraud.⁹ Nor is it in our mind to oppose their authority.

⁹ It is evident that this cannot be transferred to the legitimate penalties which are added.

3. They establish this, however, chiefly concerning the right of writers. For not a few pass over in silence patents (*brevets*) granted to inventors. Nor does the writer who thus prefers the cause of writers seem to us merely to be a Cicero *pro domo* [pleading for his own house]; but in reality a greater difficulty arises concerning the other privileges. For those inventors, relying upon the privilege, are accustomed greatly, indeed excessively, to increase the natural price of the thing, with the greatest inconvenience to many; and it is probable that they would impose even harsher

conditions unless, through imitations or the fear of them, they were compelled to preserve some moderation. Therefore, in Holland itself, after the law of the year 1869, these privileges were suppressed for at least some time. Since these things are so, we judge it more difficult to demonstrate that a true right of property is constituted by a privilege of this kind; and perhaps not a few will excuse an attempt at imitation because there is reason for defending oneself against excessive demands. Therefore, concerning these matters, let each person consult in his own region the common interpretation of the law and the practice of conscientious persons.

4. This is certain: things which are openly sold—books, instruments, liquids, etc.—even if perhaps they were produced against the law of monopoly, can be bought by private persons without scruple. For that purchase is often not prohibited by law. And it would be too great a burden upon private persons if they were obliged to inquire into these things and to abstain from cooperation to which he who neglects his right seems tacitly to assent by his silence. And if, moreover, custom has tempered the rigor of the law, that custom can also be retained with a safe conscience.

251. Concerning the publication of a sermon or the lectures of some teacher, it seems that the same judgment must be made. Positive law being set aside, if the sermons or lectures were truly delivered in public, they can be committed to the press against the will of the teacher or orator without violation of the duty of justice, but often not likewise without violation of charity.

252. We judge that the same rationales are to be applied to the photographic representation of a person. It is open to you to remain hidden at home. But if you have offered yourself to be seen, you cannot at the same time restrain that use of your outward figure which demands no invasion of your person. Therefore, whether the lineaments of the body are made public in writing or by another means, no injury will of itself have been done to you, unless perhaps the method employed contains an unjust detraction. Again, however, the various inconveniences in this matter are to be met by laws.

253. You will ask what is the object of the right which the laws constitute for writers, etc.

That right has the rationale of a certain negative servitude imposed upon copies of a book, so that they are not employed by anyone other than the writer, etc., for a new edition. In this way it will inhere in the copies themselves and will be imperfect ownership.

It can also be judged to be the perfect ownership of some faculty: the faculty of selling a book, of making a thing, etc. For just as, besides the right of having something, there is a right of doing or omitting, so the “exclusive” right of doing something which has a temporal price participates in the rationale of true property. This rationale holds for any legal monopoly.

Question VI: The Privileges of the Possessor

Outline of the Question

254. Occasion and division of the question. Possession, which we have now determined to treat, is not presented for consideration under one aspect only. For:

1. It is the natural way of obtaining ownership of a thing belonging to no one. Cf. what was said concerning the primal fact, nos. 214-215.
2. Annexed to the right in the thing itself, it contains the exercise of that right; and thus it is a mere matter of fact which we omit with impunity. But because it can happen that someone possesses in fact and not by right:
3. The possession of one person can be compared with the uncertain right of another;
4. It can also be compared with the certain right of another who has lost possession.

Hence we shall bring the present question, whose connection with the preceding question is manifest, under two chapters. For we shall see:

In the first chapter, the conflict of possession and an uncertain right, or the privilege by which, in a doubt of right, the case is adjudged to the possessor.

In the other chapter, the conflict of possession and a certain right, or the privilege of prescription.

Chapter I: The More Favorable Position of the Possessor

Sanchez, *On Marriage*, bk. 2, disp. 41; *On the Decalogue*, bk. 1, chap. 10, nos. 10-15; Molina, *On Justice and Right*, treat. 2, disps. 12-17 and disp. 103, from no. 4; Lessius, *On Justice and Right*, chap. 3, doubts 9-13; Pirhing, *Canon Law*, on bk. 2 of the *Decretals*, tit. 12; C. de Lugo, *On Justice and Right*, disp. 2, nos. 59-64; disp. 17, nos. 86, 94; Lacroix, *Moral Theology*, bk. 3, nos. 496, 563; St. Alphonsus, *Moral Theology*, bk. 1, nos. 35-39; Carrière, *On Justice and Right*, nos. 1033-1034, 1093-1102; Marrès, *On Justice*, bk. 1, nos. 384-399.

Article I. Notions and Conclusion

§ 1. Notions

255. What possession is and how manifold it is. 1. DEFINITION. Possession properly is: *The detention of a thing by oneself or by another with the intention of an owner*, that is, with the intention of having it as one's own. The detention itself is called the *body of possession*, *natural possession*; the will to vindicate the thing as one's own is its *intention*. Both are required for *civil possession*.

2. DIVISION. Possession is distinguished as:

Natural and civil. We have just given a sufficiently customary signification of these words. It is not pertinent to recall several others here. Cf., for example, Lessius, chap. 3, doubt 10.

Just and unjust. The latter, unlike the former, is opposed to the right of another, whether known or unknown.

Of good and bad faith. The former has joined to it the persuasion of ownership or right; a possessor in bad faith knows that the thing belongs to another or, while doubting this, omits the moral diligence required so that, at least by the aid of a reflex principle, he can lay aside the doubt or meanwhile preserve the thing until the owner has been established.

Vicious and nonvicious. The former is that of one who possesses by force or secretly. For by those vices all efficacy of possession is taken away. You should observe, however, that these vices are considered in relation to him upon whom force has been inflicted or from whom the possession is concealed. Hence, with respect to others, the possession is not judged vicious.

3. OBJECT. Properly, only a corporeal thing is possessed. That notion, however, can also be transferred to rights. For just as the possessor of the thing itself exercises the right of ownership in fact, so he who exercises any right in a thing can be said to *quasi-possess* that right. Therefore, this *quasi-possession* of a right—which in present-day law is now called *possession* without an addition—consists in the exercise of the right as the body of possession, and in the will to exercise that right as the intention.

4. REQUISITES. To acquire possession of a thing there is required, besides the intention of having the thing for oneself, a certain apprehension of the thing, whether real or fictive, which is sufficient by disposition of law: for example, the symbolic delivery of the keys of a house. In a few cases someone is judged to possess by the statute of law alone, without any apprehension of the thing or even without intention. This is called *most civil possession*, because it is wholly from positive law. Thus, in French law, possession of an inheritance passes to the legitimate heirs (*ab intestato* [in intestacy]) without any act of theirs (*saisine héréditaire* [hereditary seisin]).

Possession of a thing is retained, however, by the intention alone, or a habitual will, so long as the thing remains in our power. Again, by the positive disposition of our law, possession of a field is not civilly lost unless the field has been occupied by another for a year.

256. The privileges of possession. The laws of all nations openly favor the possessor, both because a certain presumption of a just title is inherent in peaceful possession, and because these privileges conduce to public peace and tranquility and arouse the diligence of citizens in guarding their own things. Hence Alexander III: “By divine and human law, the condition of the possessor is better.”¹ It belongs to the jurists of each law to pursue the individual privileges. Yet they generally fall under two genera. For they either exempt the possessor from the burden of proof and, in doubt, adjudge the thing to him; or they attribute to him the fruits of the thing possessed, indeed even the thing itself, provided that certain conditions are present.

¹ Canon *Ad aures* [To the Ears], 6, “On Prescriptions” (II, 26). *Divine and human law* must be understood, as the Gloss itself appears to declare, as canon and civil law. Moreover, the words *divine and human* are set in italics because they are an *excised portion*, that is, they were not received into the body of the law.

257. What we ask in this place. The former privilege is treated here, and indeed that advantage of possession which is described thus in the law:² “The advantage of possessing, however, consists in this: that even if the thing does not belong to the one who possesses it, provided that the plaintiff has not been able to prove that it is his own, possession remains in its place.”

² § 4, *Retinendae* [For Retaining], *Institutes*, “On Interdicts” (IV, 15).

But in truth, both its extent is disputed in contrary directions, and a question can be raised concerning its origin.

1. And as regards its extent, it is sufficiently agreed that “in equal fault or case, the condition of the possessor is the more favorable,” which is rule 65 in the *Liber Sextus* [Sixth Book]. But what is to be said when stronger reasons are opposed to the possessor? Some³ then oblige the possessor to concede the thing possessed to the adversary, at least for a proportional part which they wish to be estimated from the greater probability; while most⁴ judge that he can safely retain the whole thing and that the case is equal so long as the matter is doubtful on both sides. Sanchez, however, and C. de Lugo require the possessor to have in his favor a probable reason distinct from possession, while others, such as Lacroix,⁵ ascribe to the possessor, from the sole fact that he possesses, a certain right of retaining the thing until the adversary has clearly proved that it is his own. This is pleasing to St. Alphonsus, *Moral Theology*, bk. 1, no. 36.

³ Thus Coninck, Valencia, and Sanchez in the work *On Marriage*, bk. 2, disp. 41, no. 12.

⁴ Thus Molina, disp. 103, nos. 8, 9 (at the end); Sanchez, retracting his former opinion in *On the Decalogue*, bk. 1, chap. 10, no. 9; C. de Lugo, disp. 17, nos. 86, 94.

⁵ *Moral Theology*, bk. 3, no. 563.

2. As regards the origin of the privilege, it is asked whether it was introduced by the law of nature itself or only by positive law. Many are silent concerning that matter; almost all the rest speak scarcely without ambiguity. Nevertheless, from the absolute manner in which they employ the principle of possession, Molina, C. de Lugo, and Sanchez, in the places cited above, seem to acknowledge that it is sanctioned by nature, as do all who think the principle of possession universal, if they speak consistently with themselves. St. Alphonsus, bk. 1, no. 36, and C. d'Annibale, vol. 1, no. 260, assert the same more openly; and Lacroix does so in set words: “This axiom is founded upon the law of nature, as Cardena rightly says in the first *Crisis*, disp. 56, no. 1241. For thus, even apart from human laws, it would be against the law of nature to despoil the possessor of his thing on account of a supervening doubt” (bk. 1, no. 496).

Therefore, concerning both doubts, let there be:

§ 2. Conclusion

THESIS XVIII

By the law of nature itself, the mere possession of one person is *per se* to be preferred to the uncertain right of another.

258. I. State of the Question. 1. INTENTION OF THE THESIS. A conclusion is posited at once concerning the origin of the privilege, which we contend to be natural, and concerning its extent, in

which we assent to the more benign opinion of Lacroix and St. Alphonsus.

2. THE TERMS ARE EXPLAINED.

By the law of nature itself, that is, even with positive law omitted, yet consequently upon the division of goods which has been introduced.

Mere, therefore without any other aid of some probable reason which would persuade one that the possession is just or has proceeded from a true title.

The possession of one person, strictly taken, such as we have described it.

Per se. By these words we signify that it can happen that something is detracted from that force by positive statute; for example, that the thing is to be divided between the possessor and the one whose property it is “probably” shown to be. Similarly, possession has no force for acquiring things which are positively excepted from those which are in commerce.

Is to be preferred, so that meanwhile—until the right of another is established—the thing is adjudged to the possessor and his detention is sanctioned.

Of another. For where the possession and a probable right belong to the same person, there is no contrariety, but a confirmation of the possessor's privilege.

To the right, which is contrary to the possession itself. That right, however, can be one of perfect ownership, by which all force of possession is destroyed; or of usufruct; or of another right in a thing, by which possession of the thing itself is weakened only in part. That is, the possession of some right is conquered by ownership of that same right, but not of a dissimilar right. Among the rights which are stronger than the possession itself now present, there must also be placed the right which the prior possessor had from possession when he was deprived of his possession by force or fraud. Possession, therefore, does not confer of itself a privilege against him in relation to whom it was vicious.

Uncertain. We call uncertain a right which is not morally established. Yet it must be carefully observed that this right can be established both directly and indirectly. Thus, if a doubt concerning true ownership is narrowed to a few persons, so that it is sufficiently clear that the thing does not pertain to the possessor but to one of the few, though none of them, taken separately, is supported by more than a probable reason, those few have a certain right that either the whole thing be adjudged to one of them or that it be divided among them. This species of fact, therefore, is left aside by us here. Hence the scope of this argument is limited to goods which are called *truly uncertain*.¹

¹ C. de Lugo, disp. 7, no. 132.

259. II. Proof.

Natural law, as regards things which are in commerce, wills that a person should have inviolably as his own those things which he has materially made his own, provided that another's right is not violated.

But. Through possession a person materially makes the things possessed his own.

Therefore. He can have them inviolably as his own, provided that another's right is not violated.

But no right is violated except that of one who proves his own contrary right to be morally certain.

Therefore. By the law of nature itself, possession is *per se* to be preferred to another's uncertain right.

The major is established from the thesis concerning the right of property and the primal fact. For it follows from these that the bond by which someone orders a thing to his own good, or by which he has materially made the thing his own, is sanctioned by nature itself, *per se* and unless another's right stands in the way, as a title of true right.

The first minor is evident from the notion of possession. For it differs from occupation in its object alone, which, in occupation, is definitely a thing belonging to no one.

The other minor is proved by the fact that, as is shown in the disputation concerning probabilism, an uncertain obligation is no obligation. Hence thus: A right is violated only by neglecting the correlative obligation of justice. **But.** The possessor has no obligation of justice except toward one who demonstrates his own contrary right with moral certainty. For this obligation is demonstrated neither directly—the case itself establishes this—nor indirectly. For by what means would you show that the possessor is bound by an obligation to hand over the thing on account of another's uncertain right? The controversies themselves openly show that an obligation of this kind has not been promulgated.

This is confirmed by the words of the jurist Paul: “Any possessor, by the very fact that he is a possessor, has more right than he who does not possess” [Law 2, Digest, *Uti possidetis* [As You Possess] (XLIII, 17)]; and by C. de Lugo: “The possessor in good faith has in his favor the title of legitimate possession, which, so long as it is not plainly defeated, always prevails: for the possessor stands as one who is attacked and is merely defending himself, and therefore he must be altogether defeated” (disp. 17, no. 86).

260. III. Difficulties.

1. Possession is a matter of fact, not of right. **Therefore.** It confers no right.

Reply. It is a matter of fact with respect to the true and certain owner, *I concede*; with respect to others, *I subdistinguish*: It is a matter of fact which can be a title of right, *I concede*; which cannot be such, *I deny*. For some facts are juridical, others are not.

2. The laws say only: in an equal case the possessor is to be favored. **But.** The case is not equal where someone whose right is more probable is opposed to the possessor. **Therefore.**

Reply. I deny the supposition.

For the rule objected is a rule of positive law which holds even where it is disputed among only a few who is the owner of the thing; but we argue from the law of nature which exists *per se*, and we treat of goods properly uncertain. For the most part, moreover, the case can be called equal, if not in degree, at least in species, since on both sides it is almost always doubtful.

3. Where no probable reason protects the possessor, he cannot acquire for himself a conscience that the thing is his own (thus Schild, in Lacroix, bk. 3, no. 563).

Reply. This conscience is required so that he not restore the thing to the claimant, *I deny*; it is required so that he himself retain the thing for himself, *I pass over*.

This is to be determined from the case. Namely, as C. d'Annibale says: "Whenever a controversy concerning ownership is raised against a possessor, it is not asked whether the defendant (he himself) possesses by right, but whether the plaintiff claims by right" (vol. 1, no. 260).

4. Contrary reasons can prevail over the presumption arising from possession. — Presumption yields to truth.

Reply. I deny the supposition that we argue from a presumption of ownership in the possessor. Besides, there is no contrary truth unless the right of another is established.

Article II. Supplements to the Doctrine

I. COROLLARIES

261. The violation of possession induces, as most authors hold, an obligation of restitution, even if the invader relies upon a probable right. For it is opposed to the certain right of the possessor. And this is the certain rationale by which it is proved that no private compensation belongs to him whose right is merely probable.

262. The right which is acquired by possession is a conditional right, which falls if the certain owner appears; by this right, meanwhile, there is attributed the faculty of retaining the thing and enjoying it, with the substance of the thing preserved intact if this can be done, and under the burden of restitution if a case of just eviction occurs. Moreover, the very quantity to be restored will be defined in various ways according to the good or bad faith of the possessor, as is handed down in practical moral discipline. Hence it appears at the same time that this right of the possessor benefits the true owner of the uncertain thing, if he afterward appears, while the division of the thing among those who bring forward probable reasons would harm him not a little.

263. A conditional intention of having the thing, by which someone wills to retain for himself a thing probably or certainly belonging to another unless the certain owner appears, seems, on account of the rationale given, to be sufficient for enjoying the privilege of which we now treat. Yet, in order that a possessor of this kind may afterward be immune from every obligation of restitution, he must have made sufficient inquiry concerning the true owner.

An intention of this kind, however, would be useless for acquiring a thing by prescription. Cf. C. de Lugo, disp. 7, nos. 20, 21.

II. SCHOLIA

264. The exercise of a presumed right. Some presumption of a true right seems to us, as we were saying, irrelevant to the present thesis. But when it is merely doubtful which of the two, the possessor or the adversary, that is, the plaintiff, is truly the owner, the right of the latter will be morally certain unless a probable reason assists the possessor himself. Cf. St. Alphonsus, bk. 1, no. 36. That probable reason can be the very presumption of right which is *per se* connected with the fact of possession. Then, therefore, even in our opinion, the presumption will have to be used.

265. The rationale of the common good. Although the common good demands that provision be made for the stability and security of ownerships and that the frequency of lawsuits be met, this

rationale, by which the ruler is moved to enact a law, does not prove that any law was enacted by nature itself. Cf. Bouquillon, *Fundamental Theology*, no. 296.

266. Concerning a possessor in bad faith. By the words and the general rationale of the thesis, we are compelled to attribute this same privilege to a possessor in bad faith. Yet because you have the right to repel another who lacks a certain reason for vindicating the thing as his own, you are not thereby exempted from the burden of restitution which was treated in nos. 261-262. Thus, therefore, we shall define the whole matter: A possessor who in bad faith has occupied a thing whose owner is uncertain is bound to preserve it so long as there is hope of finding the true owner. When that hope has been removed, the thing will have to be expended by him for some pious use. Meanwhile, however, as regards those who do not prove a certain right, he enjoys the possessor's privilege. We judge that this can be conceded without any inconvenience.

This doctrine, insofar as it grants a certain more favorable position even to a possessor in bad faith, is excellently confirmed by these words of C. d'Annibale: "If, while doubting, you entered into possession (all the more if conscious of the injustice) with a practical doubt, the almost most common opinion teaches that the thing must be restored, at least in proportion to the doubt. This is so, moreover, when controversy arises concerning possession itself, that is, when it is not sufficiently apparent which of the two is in possession, the plaintiff or the defendant; but when a question is raised concerning ownership, I fear that this opinion is true." Thus vol. 2, no. 121. In note 32, however, he adds the following: "Namely, they say, he who entered into possession in good faith, if afterward he began to doubt, could form for himself a certain conscience by that rule of law: 'In doubt, the condition of the possessor is better'; he who entered into it in bad faith could not do likewise. And why, pray? Namely, says C. de Lugo, disp. 17, no. 86: 'Because a possessor of doubtful faith truly and strictly does not possess legitimately, but endeavors to possess.' But 1. This reason—without offense to the expression—is false; for even a thief possesses, and Lugo himself admits it (§ 128, 6); and the laws protect even vicious possession against strangers. (Last law, *De A. P.* Thus C. d'Annibale; but it is law 1, Digest XLIII, 17.) Nor 2. does it flow from the nature of possession, which, since it consists in fact, not in right, is understood in the same way both when it is entered upon and after it has been entered upon (Donellus, bk. V, VI, 10); and therefore it makes the condition of the possessor better, because he who contends that the thing is his own must prove this clearly (see *Prolegomena*, § 260). Nor 3. does it flow from the nature of good or bad faith; for this is nothing other than the possessor's estimate, which changes nothing, and neither adds anything to nor takes anything away from anyone's right, which is something objective. Two persons, you and I, picked up a thing found on the road, which you judged to have been abandoned, while I judged it to have been lost; or we bought a field from Seius, which you thought belonged to the seller, while I thought it belonged to Caius. Later Caius brings a claim, but does not prove that the thing had been lost by him or that the field is his. What does your good faith add to your right, or take away from Caius's right? Absolutely nothing. Why, then, can you employ against Caius that rule of law, 'In doubt, the better, etc.,' while I cannot? Perhaps in hatred of bad faith? But there is no penalty without a law, nor an extraordinary or positive penalty (such as this one) without a judge (*Prolegomena*, § 309, 45). Surely, he who contracted marriage while doubtful of an impediment (with the impediment of a bond excepted, because the prior marriage possesses), after the matter has been investigated in vain, licitly asks for the marital debt (St. Alphonsus, bk. 6, no. 906). And he who, thinking himself irregular, accepted an ecclesiastical benefice makes the fruits his own (see

Prolegomena, § 404). And the Sacred Penitentiary, January 16, 1837, replied that he who had received a moderate profit from a loan with doubtful or bad faith could be absolved, provided that he was prepared to abide by the mandates of the Church. (In Gury, vol. 1, no. 878.) But how rightly I, perhaps the first of all, have said these things, let the wise see.”

Chapter II: Prescription

Molina, *On Justice and Right*, treat. 2, disp. 60-80; Lessius, *On Justice and Right*, bk. 2, chap. 6; C. de Lugo, *On Justice and Right*, disp. 7; St. Alphonsus, *Moral Theology*, bk. 3 (4), nos. 504-517; Carrière, *On Justice and Right*, nos. 395-500; Waffelaert, *On Justice*, vol. 1, nos. 211-262; C. d'Annibale, *Summary of Moral Theology*, vol. 2, nos. 139-154, 241; Ballerini-Palmieri, *Moral Work*, vol. 3, treat. 8, pt. 1, chaps. 4 and 5 (nos. 262-483); Lehmkuhl, *Moral Theology*, vol. 1, nos. 917-927; *Das bürgerliche Gesetzbuch des deutschen Reiches* [*The Civil Code of the German Empire*], pp. 57 ff.; 245 ff.

Article I. Initial Presentation of the Controversy

267. Notions concerning prescription. 1. PRESCRIPTION, so called from the exception written beforehand by the Praetor in the formula by which he granted a judge,¹ so that at first it designated any mode of repelling the plaintiff, but afterward was used specifically for that defense which is sought from an interval of time (*temporal prescription*). Hence, to turn to its present use:

¹ Cf. Gaius, IV, 132.

Prescription, in the broader acceptation,² signifies a mode of acquiring rights, or of repelling an action, or of extinguishing obligations, granted by law to him who for a definite time is in possession of a right or has in fact been free from executing an obligation.

² Understand, however, that which concerns private rights. For it does not pertain to us here to dispute concerning the prescription of a political right and jurisdiction.

Prescription so understood is divided into *acquisitive prescription*, or *usucaption*, which grants both an action for vindicating the right and an exception for repelling the adversary; and prescription strictly so called, or *liberative prescription*, which is a mere exception.

2. FAITH, which in this matter must especially be attended to in order to discern the efficacy of prescription, is the persuasion of the mind or conscience by which someone either keeps a thing or omits to perform something.

That estimate of the mind, if it agrees with the disposition or intention which you have concerning the matter, so that you will or do nothing which you judge to be unlawful for you, is called *good faith*.

Opposed to this is *positive bad faith*, by which someone retains as his own a thing which he himself is forbidden by conscience to hold, at least as his own, or by which, against the dictate of conscience, he does not pay some debt.

Between the two consciences, as it were, is the middle state of him who does not doubt another's right, but at the same time either is accidentally excused from paying a debt—for example, on account of inability—or, because of the nature of the other's right, has nothing positively to perform

unless perhaps asked. For on the one hand he cannot have a positive faith that he owes nothing; but on the other hand he does or omits nothing against conscience.

From what has been said it is apparent that he is not in bad faith who, although he does not prohibit another from exercising his right of an active servitude—for example, a right of way—nevertheless allows him not to act; or he who waits until judgment is rendered before paying a penalty which is not owed except after the judge's sentence. On the contrary, he who, while doubting another's right, has begun to possess strictly is stained by bad faith.³ For it is not licit for him to have the intention of having the thing absolutely.

³ C. de Lugo, disp. 7, nos. 17, 18.

C. d'Annibale, vol. 2, no. 140, calls *civil faith* that faith or persuasion which satisfies the conditions prescribed by civil law. Thus positive laws not rarely require good faith only at the beginning of possession,⁴ or, being more severe than the law of nature, reject good faith which rested upon an error of law. It was disputed, for example, whether the faith required by Roman and canon law could or could not exist together with an error of law.

⁴ Thus law 44, § 2, Digest XLI, 3.

268. Matters disputed and opinions. Concerning prescription, three questions are chiefly raised.

1. Concerning its origin, it is asked whether it is from the law of nature, from the law of nations, or from strictly positive law. It is readily agreed that, for its perfect regulation, there is need of positive dispositions by which the time and the conditions are defined; and it is known to all that some law of prescriptions is in force everywhere, so that at least this material description of the law of nations fits prescription: *the civil law of very many nations*.

Not a few jurists have been pleased to ascribe a certain prescription to natural law, by which they might better explain the efficacy of prescription among nations and with respect to foreigners.

Reuter,⁵ whom R. P. Lehmkuhl, vol. 1, no. 917, appears to follow, thinks that the substance of this institution is to be referred to the law of nations. Grotius, work cited, bk. 2, chap. 4, no. 9, is not alien to this opinion.

⁵ *Moral Theology*, pt. 3, no. 85.

Most theologians and canonists judge that this right is founded upon civil or canon law. Cf. St. Thomas, *Quodlibet* 12, art. 25; Molina, treat. 2, disp. 61, no. 6; C. de Lugo, disp. 7, no. 6; Schmalzgrueber, *Canon Law*, on bk. 2, tit. 26, no. 4; Ballerini-Palmieri, *Moral Work*, vol. 3, treat. 8, pt. 1, chap. 5, no. 264, etc.

It seems to us that, even of itself, it can happen that, on account of an excessive interval of time, the bond between a thing and its owner which efficiently precedes the right of ownership (no. 215) is morally broken, especially since they concede that jurisdiction or political dominion can perish in this manner. Nevertheless, we judge that the law of prescriptions now in force, especially civil law, has force from human law alone. Nor shall we remain longer in this question, which has little usefulness.

2. Concerning the force of human laws, indeed, another question follows. It is asked whether prescription can be established by a positive sanction as a true title of ownership or liberation in the internal forum or forum of conscience, or whether all its efficacy is confined to the external forum.

Concerning this, for a sufficiently long time in former days, there was doubt. St. Raymond himself writes thus concerning one who, after prescription had been completed, came to know that he had possessed another's thing: "Different men think different things. Almost all theologians say that he is bound to restore; almost all doctors of law say the contrary." *Summa*, bk. 2, tit. 5, § 15, toward the end.

Zech also held the former opinion, *On the Right of Ecclesiastical Things*, sect. 4, §§ 576-578.

Others at that time conceded that prescription had force in conscience only when the thing had been acquired by an onerous title, or when he against whom prescription was made was to be accused of negligence. Thus Adrian VI, in Molina, treat. 2, disp. 61, no. 5, and others.

Today, however, there is agreement among almost all—as Molina, Lessius, C. de Lugo, Schmalzgrueber, etc., contended, whom St. Thomas and Scotus appear to have preceded—that human law has this force and often brings it about that, through prescription, rights are acquired and lost even in the internal forum; and the controversy pertains to the question concerning which laws in particular this is to be affirmed. This dispute is foreign to our purpose.

3. Concerning the faith required is the third question, which is not far removed from the preceding one: whether, by the benefit of a law so providing, even he who lacks good faith can prescribe; or, to speak more generally, how far, notwithstanding the law of nature, a human statute which sanctions prescription without regard to faith is ineffectual. Connected with this is the other question, whether laws of this kind are or are not to be positively condemned.

After the decree of the Fourth Lateran Council, which will be discussed immediately, most theologians are accustomed to require, for the effect of prescription in conscience, that good faith by which someone, throughout the whole time necessary for prescription, judges that he has the right or that he is bound by no obligation.⁶ And hence certain more recent authors, whose line is led by Ballerini, inveigh rather violently against modern laws, chiefly those which are contained in the Napoleonic Code. Concerning these, cf. the Scholia.

⁶ Once that time has elapsed, knowledge of the past error can no longer cause harm, since the completed prescription itself is for you a just title of immunity or ownership.

They nevertheless set aside the case of a passive servitude by which someone is merely obliged to suffer some action or work of another upon his own field, such as a right of way. They concede that prescription can take place, with consciousness of another's right, against that other who neglects to exercise his right during the time established by law.

Can this be transferred to money which someone is not bound to pay unless asked, so that he would of himself be freed from the debt if, during the time required for prescription, the creditor omitted to ask for payment? Molina, disp. 66, no. 10, does not appear alien to this opinion; and Pichler, *On Canon Law*, bk. 2, tit. 26, nos. 32, 33, defends it more expressly.

C. de Lugo, disp. 7, no. 48, also says more moderately: "If the law, on account of the public good, were to introduce the provision that someone, without possession in positive good faith, but nevertheless without bad faith, could prescribe something or quasi-prescribe it, this does not appear illicit from the nature of the thing.... Why, then, could civil law not similarly introduce at some time, on account of some public good, the provision that he who without fault did not pay some monetary

debt for ten years would by that very fact remain free, although throughout that whole time he had been conscious of his debt?" (Cf. also nos. 42, 52.)

Finally, recently, R. P. Slater wrote these things: "Good faith in liberative prescription consists in this: that no obstacle is placed to prevent the other from being able to use his right."⁷

⁷ *On Justice and Right*, no. 43.

269. The force of the Lateran decree. Something especially important in this matter, therefore, is to ascertain accurately what is the force of canon 41 of the Fourth Ecumenical Lateran Council (A.D. 1215), which is transcribed thus in canon law, final chapter, "On Prescriptions" (II, 26):

"Since everything which is not from faith is sin, by synodal judgment we define that no prescription, whether canonical or civil, shall have force without good faith, since generally derogation must be made from every constitution and custom which cannot be observed without mortal sin. Hence it is necessary that he who prescribes have, in no part of the time, consciousness that the thing belongs to another."

Now then, this council, which by several dispositions—specifically canons 39 and 40—either tempers the rigor of civil law or recalls it to canonical or natural equity, by this decree of its own directly wills to derogate from those Roman laws which granted the benefit of prescription even to a possessor in bad faith; and it chiefly has regard to law 4, § *Si antequam* [*If Before*], Digest, "On Usucaptions," by the force of which immovable things were acquired by possession of ten or twenty years, provided only that they had begun to be possessed in good faith. For that canon is entitled: "On the Continuation of Good Faith in Every Prescription."

Furthermore, as the proximate cause of a derogation of this kind, the general definition is offered: "No prescription, even civil, shall have force without good faith." Its deeper rationale is that, from the time when, before some right had been acquired, you came to know that the thing belonged to another, you could not retain it against the dictate of conscience: "Everything which is not from faith," that is, from the persuasion of conscience, "is sin" (Epistle to the Romans 14:23). Since a civil statute has no force against this obligation, he who wishes to stand by it would sin, and therefore derogation must be made from it. Thus far the literal exposition.

Hence, as regards the force of the decree, only acquisitive prescription is directly touched. The doctors nevertheless judge that the rule is to be transferred also to liberative prescription, for the reason offered is general and the cause is equal.⁸ We do not oppose this conclusion, provided that this is done cautiously and prudently, with the foundation of this canon well understood.

⁸ Cf. C. de Lugo, disp. 7, no. 50; d'Annibale, vol. 2, no. 153, etc.

Cautiously and prudently, I say, lest some rationale of difference fall away. That usucaption cannot plainly be equated with liberative prescription—is this not already sufficiently urged by the nearly perpetual practice of civil laws, which attend far less to faith in prescription than in usucaption? So it was already in Roman law; so in French and Italian law; so in the more recent German Code itself, which, although in art. 937 it placed among the conditions of usucaption good faith continued throughout the whole time, nevertheless requires no faith for civil prescription. Cf. arts. 194-197.

The foundation of the Lateran canon, however, is rendered briefly thus: because the public authority cannot lend its authority to frauds and spoliations. Thus González, *Commentary* on this chapter of

canon law, no. 15.

Article II. Formulation and Arguments of the Proposition

THESIS XIX

By human law there can validly and suitably be introduced both the usucaption of a real right and prescription by which an obligation is truly extinguished.

Nevertheless, *per se* it will be unlawful for a possessor or debtor in bad faith to enjoy the benefit of the law.

Nor for that reason are laws to be judged unjust which, without regard to good or bad faith, extinguish an action after a definite time.

270. I. State of the Question. 1. INTENTION OF THE THESIS. The intention of the thesis is directed to three points. For in the first part, with the opinion common today, we attribute this force to human law, by which, through the aid of prescription, it can give or dissolve rights even in the internal forum. In the second part, however, we deny that this force *per se* extends so far as to grant an advantage even to one in bad faith. While we posit this exception, we also defer to the authority of the Lateran Council. Finally, in the third place, we establish that laws which, with the consideration of good or bad faith omitted, simply suppress actions are by no means to be condemned.

2. THE TERMS ARE EXPLAINED.

By human law, which will be canonical in ecclesiastical matters, civil in secular matters,

Validly, or efficaciously,

And suitably, or usefully, so that they are to be praised,

There can be introduced, with the question of first origin omitted, whether this may perhaps be natural,

Both usucaption, or acquisitive prescription,

Of a real right: for not only ownership, but also usufruct, use, habitation, and other rights in a thing can of themselves be acquired by prescription, if the law has extended the force of prescription to them. This has in fact occurred concerning most of these rights, with the exception of certain servitudes.

And prescription, more strictly so called, or liberative prescription,

By which an obligation, and not only an action before a magistrate,

Is truly extinguished, that is, in both forums.

Nevertheless, per se, or for the most part, unless another rationale of the common good demands a more universal efficacy. We shall give examples in the immediately following article.

In bad faith, at least of the positive kind which was explained above. Concerning him who is in the middle state, cf. no. 278.

For a possessor, or for him who wishes to usucapt,

Or debtor, who wishes to be released by prescription,

It will be unlawful, or prohibited by the higher law of God,

To enjoy the benefit of the law, even if good faith is not required by the letter.

Nor for that reason. Thus far nothing has been said concerning laws which make no mention of good faith. Nor will the thesis be posited concerning all of them, but only concerning those which merely deny an action. Concerning others, see below, nos. 278 and 283.

Nor for that reason are laws to be judged unjust: therefore they have force and are not to be censured,

Which, without regard to good or bad faith, and therefore not attending to bad faith. For no law expressly professes itself to favor it.

An action, not the right itself, from which civil protection is thus merely removed,

After a definite time, understood as defined by the law itself,

Extinguish, so that the plaintiff must lose his case and the defendant cannot be punished by the judge.

3. NOTE OF THE THESIS. We give the three parts as philosophically certain. The second, moreover, must also be held theologically certain from the authority of the Lateran Council.

II. Proof.

271. A. FIRST PART. By human law there can validly and suitably be introduced both the usucaption of a real right and prescription by which an obligation is truly extinguished.

N.B. Because the force of a law, as an ordinance toward the common good, is closely connected with its suitability, and because the reasons are nearly common to usucaption and prescription, we shall comprehend the various assertions of this part in one reasoning.

First Argument. From reason. Laws which are part of a wisely ordered governance of private possessions are validly and suitably enacted. For we saw, in Thesis XVI, that this ordering pertains to the public authority.

But. Such are the laws which introduce usucaptions and prescriptions by which rights themselves and obligations of conscience are affected. **Therefore.**

The minor is proved by indicating the various common advantages which flow from these institutions. And in truth, through them:

a) Ownerships of things become more certain. Without usucaption, it would scarcely be possible to prove incontrovertibly that a thing belongs to someone, since it would have to be traced back to the first occupier and the legitimate possession of all who received it from him in order would have to be demonstrated.

b) Very many and most difficult lawsuits are cut off. For with usucaption and prescription removed, complaints could be brought against both a possessor and a debtor from the most ancient causes; but the more a lawsuit flows from an ancient source, the more difficult it is to adjudicate and the more protracted it becomes.

c) Not a few hatreds and dissensions of citizens are forestalled. Not only are lawsuits themselves accustomed to beget hatreds, but so long as the adversary's right remains uncertain in

some way, manifold occasion is given for suspicions and quarrels by which peace and concord of minds are disturbed.

d) Provision is made for the security of agreements. He who acquired some thing by purchase, inheritance, etc., unless he were protected by the safeguard of prescriptions, could scarcely have secure possession of the thing or become more certain concerning the extent of the estate.

e) Citizens are freed from the excessively grave burden of perpetually preserving receipts of debts and various instruments.

f) Dangers of sinning and fears of conscience are removed. Often, if there were no prescription, there would arise, with great harm to the family estate, an obligation to deprive oneself of goods possessed for a long time in good faith.

The less voluntary a cause this necessity had, the harsher it would appear and the more it would provoke the mind to sin. And how many anxieties would flow from these very doubts for men of timorous conscience!

g) The minds of men are stimulated to care diligently for their own things. For he who knows that he will fall from his right unless he acts promptly is greatly incited to diligence and industry.

It will escape no one that, although not the individual reasons, nevertheless several of them—for example, those under letters a), d), f), and g)—tend toward requiring or recommending a prescription which is upheld even in the forum of conscience.

Add to these that from long possession or from the creditor's prolonged silence there arises a valid presumption of right or of payment; that negligence is not undeservedly affected by a certain penalty, as it were; and, further, that after a long time the possessor or debtor has arranged his expenditures on a settled basis according to the resources which he thought were his own. Nor indeed will you be able to doubt that you are entering into the opinion of the authors whom we shall presently mention, who extolled these provident institutions with the highest praises.

Second Argument. From authority:

a) Of the Lateran Council, which, by condemning prescription vitiated by bad faith, appears indirectly to admit the same prescription when fortified by good faith;

b) Of both canon and civil law; civil law, indeed, of almost all nations, which, as at least the most probable opinion holds, establishes prescriptions of the rights themselves. What is more, reasons plainly similar to ours are offered in civil law itself. Cf., in the fifty books of the *Digest*, law 5, *Pro suo* [As One's Own] (XLI, 10); law 2, principium, *De aqua et aquae pluviae arcendae* [On Water and the Restraining of Rainwater] (XXXIX, 3); law 28, *De verborum significatione* [On the Signification of Words] (L, 16); and, in the *Code*, law 7, principium, *De praescriptione triginta vel quadraginta annorum* [On the Prescription of Thirty or Forty Years] (VII, 39).

c) Of jurists and theologians. Cicero, *For Caecina*, chap. 26, calls usucaptions “the end of anxiety.” Gaius, cited in law 1, *Digest*, *De usurpationibus et usucapionibus* [On Usurpations and Usucaptions] (XLI, 3), affirms that “usucaption was introduced for the public good.”

Cassiodorus, in an epistle written in the name of King Theodoric, has these words, which have now customarily been said as a proverb: “Thirty-year prescription, the patroness of the human race.”¹

¹ *Variae*, bk. V, Epistle 37, under this title. Thus Carrière, no. 418.

Moreover, a long line of men could be cited, with St. Thomas at its head, who, among theologians of the greatest learning and virtue, do not hesitate to attribute this force and efficacy to prescription. The conclusion is therefore proved to be most manifest.

272. OF THE SECOND PART. Nevertheless, *per se* it will be unlawful for a possessor or debtor in bad faith to enjoy the benefit of the law.

First Argument. From the decree of the Lateran Council. For at least this conclusion is contained in the general principle given there: “We define that no prescription, whether canonical or civil, shall have force without good faith.” Nor does it help to except liberative prescription, since, at least *per se*, the cause of each is entirely equal, and we posit the conclusion as true only *per se*. Besides, theologians agree concerning the inference, and rather extend the force of that decree farther.

This is confirmed by the second Rule of Law in the *Liber Sextus*: “A possessor in bad faith prescribes at no time.”

Second Argument. From reason. It is unlawful to enjoy the benefit of a law which is deprived of all force by the higher law of nature.

But. A law which intends to enrich or release a possessor or debtor in positive bad faith is *per se* invalidated by nature. **Therefore.**

The minor is proved because this law would *per se* be opposed to the common good. For it is readily apparent that the arguments given in the first part do not bring it about that it is for the good of the commonwealth to grant, as it were, a reward to continued positive bad faith; but, on the contrary, the public good demands that, insofar as can be done, the malice of men be restrained by laws. Unless, therefore, a rationale of the common good sought from elsewhere and prevailing demands a more universal efficacy of prescription, that is, *per se*, a law which grants the benefit of prescription to bad faith would be opposed to the common good.

273. OF THE THIRD PART. Nor for that reason are laws to be judged unjust which, without regard to good or bad faith, extinguish an action after a definite time.

For laws of this kind are defended by absolute or more universal reasons, and they do not positively favor bad faith or sin.

Therefore. They are by no means to be condemned.

The antecedent is proved. **a)** For these laws absolutely, whether good or bad faith has intervened, procure that the ownership of things is plainly established in the external forum and that provision is made for the security of agreements in the same forum; that forensic controversies, especially those whose cause is more ancient, are diminished in number; and that the diligence of citizens is fostered. Who does not see that all these things contribute greatly to the common good? Add to these that there is a reason for less attention to be paid in the external forum to the good or bad faith of the plaintiff or defendant: for faith is difficult to prove and concerns internal matters, concerning which, as they say, the praetor is not accustomed to judge.

b) Nor do these laws positively favor sin, since, by denying an action, they merely deprive certain rights of citizens of their own external protection. But it is not necessary that human law protect all

rights or punish all sins; rather, it must adapt its sanctions to the common good of human society.

274. III. Difficulties.

1. AGAINST THE FIRST PART.

a) “No one ought to be enriched with the injury or loss of another” (Rule 48 of Law in the *Liber Sextus*), **But**. This occurs from prescription. **Therefore**.

Reply. I distinguish the major. With the injury of another properly so called, **C.**; with loss, **I subdistinguish**. By private authority or without just cause, **C.**; otherwise, **N.** **I contradistinguish the minor.** This occurs by prescription: with the injury of another, **N.**; with another's loss, **I subdistinguish**. Both by public authority and for a just cause, **C.**; otherwise, **N.**

Instance. But a) it occurs with the injury of another; **β)** at least there is no just cause.

a) For no one is to be deprived of his own thing without fault. **But**. Often there is no fault on the part of him against whom prescription is made. **Therefore**.

Reply. Unless the rationale of the common good demands otherwise.

Instance. When someone is to be deprived of his own thing on account of the common good, he has a right to equitable compensation, as is observed, for example, in “expropriations.” **But**. Here there is no compensation. **Therefore**.

Reply. I distinguish the major. When the deprivation itself immediately yields to the common advantage, **C.**; when it immediately yields to the private advantage of another, and this is done on account of the common good only so that a right may be established from which that private advantage can be acquired, **N.** **I contradistinguish the minor.** And, as regards the example added, I deny the parity.

For there is a twofold disparity, by which the distinction of the major is at the same time declared. a) Individual “expropriations” must be made for a public cause; therefore, it is readily understood that there is a place for public compensation, so that the burden undertaken for a public cause may be distributed equitably among all. Individual prescriptions, however, are of a merely private order, and only the law by which they are sanctioned was enacted on account of the common good. Therefore, the changes of rights which occur on account of this cause no more demand that something be repaid from the treasury than do those to which other modes of acquiring or losing goods give place. Besides, if compensation of this kind were granted, prescription would be a rationale for burdening the treasury rather than for changing private rights. b) **Prescription is a defined and universally known part of the governance of goods in force in society.** Its effects equally threaten all who possess goods, and no one can complain of violated equality among citizens, since it is a common restriction placed upon the perpetuity of possessions. Cf. the excellent treatment in Carrière, *On Justice*, bk. 1, no. 418. As regards “expropriation,” however, someone cannot, by employing diligence, foresee or prevent it, nor does it affect all equally.

β) At least a just cause is lacking. For prescription of an action suffices for public tranquility and the extinction of lawsuits. (Thus Zech, *Canonical Institutions*, sect. IV, §§ 576-578.)

Reply. I deny that these causes are all the causes. Cf. the demonstration.

b) Prescription is not granted except to a possessor in good faith. **But.** As soon as someone knows that the thing which he possesses belongs to another, he loses good faith. **Therefore.** He must restore the thing, even after the time has elapsed, since the foundation of prescription itself is lacking.

Reply. I concede the major. I distinguish the minor. As soon as someone knows, etc., before the required time has elapsed, **C.**; after it has elapsed, **N.**

For, in usucaption, so long as “the estimate of the mind corresponds to the intention,” so long is there good faith.² **But.** After the time has been completed, by authority of the law, someone can judge to be his own the thing which beforehand, through ignorance, he possessed as his own.

² C. de Lugo, disp. 7, no. 16.

c) He to whom a thing which he knows belongs to another is adjudged by a sentence is not permitted to keep it. **Therefore.** Likewise, he to whom it is adjudged by law.

Reply. I distinguish. By a declaratory sentence, which is the more customary, **C.**; by a sentence which attributes rights, **N.** For a declaratory sentence rests upon a presumption, which yields to the truth. **To the consequent.** The parity is denied, since the law concerning prescription does not rest upon a mere presumption.

Concerning a sentence which adjudges, however, St. Thomas, II-II, q. 66, art. 5, ad 1, has these words: “To accept another's thing, either secretly or openly, by the authority of a judge decreeing this, is not theft, because it is now made due to him by the fact that it has been adjudged to him by sentence.”

2. AGAINST THE SECOND PART.

a) The circumstance of good or bad faith does not change the rights of the public authority over the goods of citizens. **Therefore.** The public authority appears able to transfer ownership to a possessor in bad faith.

Reply. I distinguish the major. It does not change the rights properly speaking, **C.**; it does not change the matter concerning which they are exercised, **N.**

For the public authority cannot dispose of the goods of citizens at its own discretion, but only for procuring the common good. But the assignment of a thing to a possessor in bad faith would harm the common good, far from promoting it.

Instance. It contributes to the common good that ancient lawsuits, etc., be avoided; and these reasons hold even if the possessor was in bad faith.

Reply. For this also it is sufficient that the lawsuit be extinguished in the external forum, as was said in the third part.

b) At least in the prescription of interest, good faith is not to be required. (Cf. Carrière, *On Institutions*, no. 425.) For those things which are not owed except by law can be dissolved simply by law.

But. Interest becomes just or due only from a law permitting it. **Therefore.**

Reply. I deny the assertion; and, to its confirmation, I distinguish the major. Things which *per se* and proximately are not owed except by law can be dissolved simply by law, **C.** Things which are so only *per accidens* and remotely, **N.** **I contradistinguish the minor.** Interest becomes just *per se* and proximately from law alone, **N.** *Per accidens* and remotely, **I pass over.**

There are indeed, as we shall see below, those who derive the universal faculty of demanding interest from positive law; but, in present circumstances, there will generally be at least another title, which will be called extrinsic, on account of which all permit those stipulations. Therefore, even if we follow that opinion, lawful interest will be ascribed to civil law *per accidens*. Nor even then will interest be owed proximately from law; rather, the immediate source will almost always be an agreement, which, according to that opinion, is made lawful by the law. Only then is interest immediately owed from law when that interest which the law itself establishes as payable is in question. And we do not deny that derogation can be made by law from this legal obligation, without regard to the debtor's good or bad faith. But it cannot happen that, on account of these infrequent causes, the right of seeking interest can be granted or taken away at the will of the ruler.

3. AGAINST THE THIRD PART.

A law which favors fraud is unjust. **But.** A law which, without regard to good or bad faith, extinguishes an action favors fraud. **Therefore.**

Reply. I distinguish. A law which favors fraud *per se*, **C.;** *per accidens*, **I subdistinguish.** One which favors it positively, **C.;** permissively, **N.**

Per se it favors the common good, public peace, and tranquility. *Per accidens*, indeed, it does not approve fraud, but does not restrain it, nor does it protect the creditor's right. But it does not pertain to human law to restrain all things (St. Thomas, I-II, q. 96, art. 2); it must, however, protect the rights of individuals insofar as this is expedient for the end of civil society.

Article III. Supplements to the Doctrine

I. COROLLARIES

275. Concerning a servitude of not acting. He who is obliged only to abstain from doing some work—for example, not to build higher—so long as he does not act, in fact performs that to which he is bound and therefore does not begin to prescribe. The response will have to be otherwise concerning a passive servitude by which someone must tolerate another's action.

The prolonged omission of that action gives the former an occasion to free himself by the aid of prescription, which, as we saw in no. 268, 3, requires no positive good faith.

276. The bad faith of the debtor does not harm the creditors. Therefore, although the debtor himself, on account of bad faith, is prohibited from repelling creditors whose claim has civilly prescribed, other creditors will be able to do this with a safe conscience. Nor is the law unjust which, as article 2225 of the French Code, grants them this faculty. For they receive the reward of greater diligence, but of no fraud.

It is worthwhile to give briefly a summary of the prescriptions of the French Code:

Usucaptions:

1. Usucaption of an immovable thing by ten or twenty years. Good faith at the beginning and a just title are required (arts. 2265, 2266-2269).
2. The rule proper to a movable thing, article 2279, with the exception of a stolen or accidentally lost thing in article 2280. Good faith is required.

Prescriptions:

3. a) Certain short prescriptions which merely extinguish an action (art. 2275).
- b) Five-year prescriptions of interest and of those things which are paid at annual or shorter intervals, with a special disposition against a minor (arts. 2277, 2278).
- c) The thirty-year prescription of every action (art. 2262).

No mention is made of good faith.

277. Concerning successors: 1) If they have succeeded by a *particular title*, there is no greater difficulty. For although the possession of a predecessor who was in bad faith does not benefit them, nothing prevents them from beginning in good faith to possess the thing in such a way that, when the time has elapsed, they acquire it for themselves by a most just usucaption. Therefore, they can both join their own possession with the possession of their predecessor and begin a new possession not infected by the defect of the predecessor.

2) If, however, they have succeeded by a *universal title*, the doctors are more divided.

There are theologians who distinguish between an immediate and a mediate heir, and permit prescription only to the latter, because he no longer, as the former does, represents the person of the predecessor in bad faith. This rationale was already well exploded by C. de Lugo, work cited, no. 61, since the obligation of the heir does not rest upon some continuation of the person, but upon the acquisition of an estate upon which there is imposed of itself the burden of repairing the losses which are to be ascribed to the predecessor in bad faith and of paying his debts. This obligation, however, heirs will begin to prescribe against this obligation, however, according to the provisions of civil law, from the time when the goods themselves have come to them.

Others, because they place prescription itself among those losses, judge that these successors can in no way prescribe—thus C. de Lugo—or at least that the time is required in which, according to the general determination of the law, every obligation is erased. Hence not a few, according to French law, grant heirs the thirty-year prescription. But the obligation of repairing a loss which consists in lawful prescription itself is certainly no civil obligation. But is the use of civil prescription legitimate for extinguishing an obligation which does not exist civilly?

To us, that obligation of repairing a loss inflicted by prescription itself seems, to confess the truth, very uncertain. It was devised by C. de Lugo with sufficient ingenuity. But, I ask, is just prescription an unjust loss? And if it is not unjust, can knowledge of it give rise to any obligation of restitution? Add that he who has prescribed is judged to have had the thing by a just title from the first moment, so that he is bound to restore none of the fruits received from the beginning of possession. In general, if an obligation of repairing losses was joined to a principal debt, when the principal debt is extinguished, is not the obligation concerning the losses also extinguished—for example, that which

arises if someone omitted to perform a promised service? Hence Lessius, chap. 6, no. 42, appears to have derived from positive law alone the reason why universal successors could not be aided by their own good faith in prescription.

We shall say, therefore, that according to most present-day laws nothing prevents even universal successors, if they are in good faith, from extinguishing the debts of their predecessor by liberative prescription. The required time, however, will have to be defined, according to the various obligations, by the provisions of positive law.

As regards usucaption, positive laws themselves are accustomed, at least in certain usucaptions, to exclude the universal successors of a predecessor in bad faith. And here you should observe how laws which seemed to have little relation to conscience do not lack all efficacy in the internal forum. French law, for example, considers good faith only at the beginning of possession. Therefore, if Titius began in good faith to occupy some field which he afterward came to know belonged to another, his possession will be infected by no civil defect. Hence the heirs will be able to use, even in conscience, the usucaption of ten or twenty years, reckoned from the death of the predecessor. On the contrary, if he had begun in bad faith, the thirty-year prescription would have been necessary.

N.B. 1. In a doubt concerning the bad faith of predecessors which, after inquiry has been made, is not removed, the principle will have force: “No one is presumed bad unless he is proved such.” Cf. French Code, art. 2268. **2.** Faith is not judged bad unless it is joined with mortal sin. Hence an error arising from slight negligence will not impede prescription.

278. Concerning good faith in liberative prescription. 1. From the proof given it must be concluded that *per se* someone cannot judge himself free from an obligation which, while conscious of it, he long omitted to execute. For even if he were excused by some inability, he could not abstain from making payment except by binding himself to payment at a future time. Thus Molina argues, disp. 66, no. 6. Therefore, *per se*, consciousness of a debt obstructs prescription, just as consciousness that a thing belongs to another obstructs usucaption.

2. Nevertheless, if the debt is of such a kind that the debtor is not bound to pay unless asked,¹ knowledge of the debt does not seem to us *per se* to obstruct prescription, so that we almost equate this case with the prescription of a passive servitude. Hence we think that assent must be given to the opinion of Pichler mentioned above, no. 268, 3, from which Molina does not dissent.² The reasons which most oppose are either impertinent or drawn from the ancient law. If, however, the creditor has demanded payment, or has delayed exercising his right merely from a certain humanity, it is evident that equity or justice itself forbids the use of prescription. Cf. Carrière, *On Justice*, no. 465.

¹ Formerly the debtor was bound to pay of his own accord; now, however, *per se*, the day no longer puts a man in default: debts must be demanded for the debtor to be in default. As they say in French, *les dettes ne sont plus portables, mais quérables* [debts are no longer payable by being brought, but by being sought]. The parties are nevertheless accustomed to derogate from this law by an express stipulation.

² “What,” asks C. d’Annibale, vol. 2, no. 152, “if someone knew of an obligation and did not fulfill it? ... If no delay can be imputed to him, neither can any bad faith be imputed; and therefore prescription proceeds for him. This, moreover, happens in two ways: if I ought to do nothing, but only to suffer something—for example, that you pass through my property—or if I ought indeed to do something, but only when requested.”

3. Moreover, the laws themselves will no longer be judged to patronize frauds and sins if, on account of a motive of the common good which is little affected by the debtor's good or bad faith, they have passed over the consideration of this faith to a greater or lesser degree.

Nor do we think that the Lateran statute so often praised is opposed to these laws.

Now the five-year prescription of interest and of payments to be made annually is supported in French law (art. 2277) by this rationale of the common good: lest, through the accumulation of interest or payments, generally through the creditor's sloth, the debtor be reduced to poverty. For, as men are, the annual sums owed, unless exacted at their proper time, are spent upon the family estate or in another, generally unproductive, manner, so that it is far more burdensome to pay at once the sums of ten years' interest than to furnish them in annual installments. Therefore, the creditor's negligence would not rarely be ruinous to the debtor unless he were protected by this prescription. This was already given as the motive by Louis XII in A.D. 1510.³ And therefore our laws pursue this prescription with special favor, so that it runs even against those who are minors in age. Hence, although not a few think otherwise,⁴ we do not see why—fraudulent arts by which he deliberately neglected payment so that he might free himself by prescription being excluded—the debtor cannot *per se* enjoy the benefit of the law with a safe conscience.

³ Cf. Carrière, no. 400; C. d'Annibale, vol. 2, no. 153, note 17; Baudry, *Précis de droit civil*, vol. 3, no. 1718.

⁴ Cf. Carrière, no. 425; Gury-Ballerini, I, 588.

The new German Code, art. 197, establishes a prescription of four years for debts of this kind, yet one subject to no special rule.

279. Concerning a thief, the question then arises whether, from the time when he has perfectly forgotten the offense, he can usucapt the thing. Many wholly oppose this, both because forgetfulness is not to be held as good faith and because a thief must take upon himself all probable consequences of his fault and therefore also answer for this forgetfulness. But unless the law requires positive good faith, from forgetfulness it comes about that at least that bad faith which obstructs the efficacy of the law ceases; and the very obligation of answering for this consequence of the fault appears able to prescribe from the very moment of forgetfulness, or, as we were saying just now, no. 277, 2, it appears to be extinguished together with the principal debt. Hence, with C. de Lugo, disp. 7, no. 151, and C. d'Annibale, vol. 2, no. 140, note 8, and against St. Alphonsus, bk. 3 (4), no. 515, we incline in mind toward the more benign side.

II. SCHOLIA

280. The rationale of the ancients. Formerly the doctors were accustomed to demonstrate the efficacy of prescription chiefly by this rationale: that the loss of a right would be the just penalty of negligence. Thus St. Thomas, *Quodlibet* 12, art. 25; and John Duns Scotus, on IV *Sentences*, dist. 15, q. 2, no. 10. Yet, to disclose our mind, a penalty is found here only in a broader or improper sense. For he who neglects his own things does not properly commit an offense, or at least is not deserving of so grave a fine or penalty; and sometimes prescription proceeds without anyone's negligence. At most, therefore, this is a secondary rationale, and it is held as such by Molina, Lessius, C. de Lugo, and Schmalzgrueber.

281. Ownership is not lost by prescription alone. Other rights in a thing can perish by nonuse itself, so that the owner by that very fact recovers the free dominion of his own thing. Ownership is not so lost. For unless there is at the same time another who usucapt the thing, the owner has no adversary who can plead prescription against him.

282. Quasi-possession of freedom. Some, after C. de Lugo, in order that they may force each prescription into one genus, explain liberative prescription by a certain usucaption or quasi-possession of freedom. These fictions seem to us deserving of rejection, since, useless of themselves, they are not free from danger. How, then, can there be prescription of a passive servitude without any intention of the owner and therefore without any quasi-possession of freedom? Cf. no. 268, 3.

283. Judgment concerning present-day laws. In several prescriptions, at least those which are of a longer time, civil laws are accustomed to omit mention of good faith.⁵ Yet they are not thereby immediately to be condemned, as though they had established rewards for frauds.

⁵ The Codes of France, Italy, and Germany make no reference to good or bad faith among the conditions of liberative prescription; the laws of England do not appear to require good faith even for usucaption, but circumscribe the law of prescriptions within narrower limits.

For they can make provision by another rationale lest they openly favor bad faith. Thus the French Code, art. 2223, left it to the choice of the possessor or debtor whether he would use prescription, so that unless he wished to repel the plaintiff by this exception, the latter's action would not perish; nor does it grant to a debtor who voluntarily paid, although conscious that prescription had been completed, recovery of the money paid. In this way it left the matter to the conscience of the one prescribing. Nor is there lacking a rationale for omitting these mentions. For proof of good or bad faith is made with difficulty in the external forum; and there are persons—for example, the other creditors of the debtor—who with a safe conscience can defend themselves by another's completed prescription, even when made in bad faith. Therefore, lest he be bound expressly to pursue an excessive variety of cases, the legislator can promulgate a simpler rule of judging which leaves the obligation of conscience intact.

284. You will ask what is to be held concerning the assignment of fruits to a possessor in good faith. Certain more recent laws, such as the French Code, arts. 549-550, dispose that a possessor who possessed a thing from a cause of itself suitable for transferring ownership (*colorable title*), whose defects he did not know, in fact makes the fruits his own by gathering them. The Italian Code, art. 703, has something similar.

This disposition, which is held to be most equitable by Carrière, nos. 1053-1054, and is approved by Cardinal d'Annibale (vol. 2, no. 241, note 22), is judged unjust by Ballerini,⁶ and is rejected by R. P. Lehmkuhl in such a way that he permits secret compensation to the owner who is thus despoiled of his fruits.

⁶ *Moral Work*, vol. 3, treat. 8, pt. 2, no. 221.

That this statute of the law can nevertheless truly be defended by valid arguments is urged:

1) From reason. With the law of nature alone considered, a possessor in good faith would have to restore to the owner fruits not consumed, and consumed fruits to the extent that, by consuming them, he had spared his own property; both, however, only insofar as they were not fruits of industry. Cf. C. de Lugo, disp. 17, nos. 38-40.

Who does not see that this determination is not easy and would be a fruitful source of controversies and lawsuits?

Hence, already by Roman law he was not bound to restore at least the fruits consumed. “He cannot bring an action concerning fruits consumed” (the owner). *Institutes*, bk. 2, tit. 1, § 35. This disposition appeared expedient to all. Furthermore, our law presumes that the fruits are consumed in each year. But if someone, employing provident thrift, set them aside, why would he thereby have become of a worse condition?

What is more, prolonged possession in good faith often arises from the negligence of the owner.

The law, therefore, while granting the fruits to the possessor, provides for the peace and concord of citizens, favors thrift, and promotes their diligence and industry. Are not these things of grave weight in evaluating the law?

2) The very antiquity by which this law is commended. For, apart from the fact that it is sufficiently disputed what Roman law established, so that there is a suspicion that by it all fruits received are granted to the possessor in good faith,⁷ this rule obtained in ancient French law. Cf. Carrière, no. 1053.

⁷ Cf. C. de Lugo, disp. 17, no. 41 ff., who, when reporting texts which support this opinion, by no means accuses them of injustice.

285. You will ask what is to be held concerning the rule of article 2279 of the French Code.

This rule, also contained in Italian law, is stated thus: “As regards movable things, possession itself is equivalent to title.” Whether this is a certain usucaption, or whether you prefer to explain this law otherwise, according to it he who with the intention of an owner has physically taken possession of a particular movable thing—not a certain aggregate—or even an unnamed banking instrument (*titre au porteur* [bearer instrument]), can retain it as his own, provided that he himself was in good faith when he received the thing and that the thing itself had not been taken by theft or accidentally lost. A just title indeed is not formally required, but without it good faith will not be present.

C. d'Annibale⁸ and Scavini⁹ attribute to this rule force as regards the forum of conscience. It is rejected by Carrière, no. 455. R. P. Lehmkuhl, vol. 1, no. 922, note, thinks that it can at least be disregarded by him whose interest it is that it not be law. Ballerini, however, says:¹⁰ “That possession so understood can have force in the forum of conscience is a most absurd hypothesis.” But from the connected discourse beginning at no. 417, it is apparent that he fashions for himself a sense of the law alien to the genuine sense.

⁸ Vol. 2, no. 122, note 38.

⁹ *Moral Theology*, 14th ed., II, 362, 589.

¹⁰ *Moral Work*, vol. 3; *On Justice and Right*, pt. 1, chap. 5, no. 437. Palmieri speaks somewhat more mildly in a note.

Again, however, this law does not appear destitute of a valid rationale.

For corporeal movable things, especially today, are very frequently exchanged among men. Therefore, in order that provision be made for the utility of commerce and the present-day intercourse of men, it is necessary that the mode of exchanging them be at once most expeditious and secure. But each is obtained by the rule which we are examining: it makes secure him to whom the thing has been

delivered. How much confusion and how many disturbances would be engendered if, on account of the owner's late vindication, accounts had to be compared among the many who had possessed the same thing in good faith, one after another! How many delays would be introduced through the controversies themselves, since the thing in litigation, while the lawsuit lasted, would be almost withdrawn from commerce! Besides, as is evident from the notion given, the rule is circumscribed by suitable limits.

Moreover, that which antiquity has approved is not to be lightly censured. Now this rule appears to have been taken from ancient Germanic law, from the law of the Franks; it is found in the constitutions (*Établissements*) of King St. Louis, and it was admitted in the customary law of the kingdom of France.¹¹

¹¹ Cf. Thiry, *Cours de droit civil*, vol. 4, p. 558.

What is more, Sanchez, *On the Decalogue*, bk. 2, chap. 23, no. 91 ff., and others maintain the force of prescription retroactively, so that what is found in law 26 of the *Code*, "On Interest" (IV, 32), has force: "Those who have fallen from the principal action through an exception cannot raise any question concerning ... the fruits of the past time." But by this fiction of law, is there not introduced the acquisition of certain movable things through possession in good faith?

286. You will ask what is to be held concerning the prescription of a stolen thing in French law.

By French law it is established that, after three years,¹² things stolen and accidentally lost can be acquired by him who then possesses them with the good faith required by article 2279.

¹² You should observe that this is by no means, as certain theologians falsely think, a three-year prescription; rather, for three years this acquisition through possession, which is treated in article 2279, is impeded.

Indeed, if he bought them in good faith at a market, at an auction, or from a merchant with whom things of a similar kind are sold, he is not bound to return the thing to the owner before the latter has reimbursed the price paid. The owner, however, will be able to bring an action for damages against the thief.

This rule, by a rationale similar to the preceding ones, is vindicated as immune from the stain of injustice.

Ballerini indeed opposes it sharply, but he was deceived by a false understanding of the law. For he argues from the fact that the law requires no good faith and no title, whereas the law requires good faith, which, where there was no cause of possession, will not easily be judged present. But when, at no. 429 ff., he considers drawing out the rationales of the advantages and disadvantages of a law of this kind, he assumes a role which is more safely permitted to those who, in the midst of business affairs, can more easily judge in what manner it is expedient to establish provisions concerning business and agreements.

Question VII: Contracts in General

General Notions and Outline of the Question

287. The notion of a contract. 1. A contract, which it is of no importance to distinguish from an agreement,¹ is defined: “The consent of two or more persons to the same agreement” [law 1, *Huius [Of This]*, § 2, Digest, “On Agreements” (II, 14)]. It is apparent that an agreement which pertains to juridical relations is in question.

¹ Formerly the definition handed down applied more to an agreement than to a contract. For the word *contract* had a less extensive scope, since it designated only agreements concerning the contraction of a bond of law, and not those which extinguish an obligation.

2. The essence of every contract consists in three things:

A *thing*, or matter, by which is designated the object concerning which it is occupied: either remote, for example, a horse or a house, or proximate: a horse to be sold or let. Moreover, it can be a thing properly so called, a human act, or the omission of an act. The proximate object is signified by the word *agreement*. For it is that common term in which, within the remote object, the wills of those making the agreement formally concur.

The consent of persons who are capable at law.

The cause why one party either transfers to the other a right in a thing or assumes a personal obligation of justice. The cause, however, which is considered here is the proximate or intrinsic end of the performance made or the obligation assumed; and therefore, in an onerous contract it will be the performance or promise of the other party, while in a gratuitous contract it will be the very intention of doing good.

That a cause of this kind pertains to the essence of a contract is apparent from the fact that without an immediate or proximate end there is no human consent.

Take care, therefore, that you do not transfer that rationale to a merely impelling cause or a more remote end, which lies outside the essence of the contract. Thus, if many agreements are made because of news of war or peace, nevertheless neither report can be held as the juridical cause of these agreements; rather, in the individual stipulations, the proximate rationale of the performance or debt is to be observed. This is customarily expressed by the very name of the contract. A donation, for example, denotes a certain delivery of a thing from a liberal intention; to sell is not merely to cede a thing, but to cede or promise it on account of the promise of a price, while to buy is to promise the price on account of the performance or promise of the thing.

3. The effect of a contract is a certain commutation of rights: either of real rights, as, in our law, in a donation, or of personal rights, so that at least one party is bound from justice to perform something—to give, to do, or to omit. Through a contract, therefore, either a person is bound, or a thing—a right in a thing—is transferred from one person to another.

Formerly, when ownership was not transferred by consent alone, the immediate effect always consisted in an obligation. Hence the more ancient descriptions of contracts are now less perfect,

though they are still retained by theologians or jurists, as when a contract is said to be “an agreement by which one or more persons bind themselves toward one or more persons to give or do something.” For what is to be said of a donation, where no obligation is assumed? Cf. what Crollé elegantly disputes concerning this matter, vol. 2, nos. 5-8.

288. Species of contracts. We shall give those which will come into use for us. Accordingly, contracts are:

a) **From their end or cause, gratuitous or onerous**, according as liberality or one's own advantage is intended by the party who cedes a right. A *mixed* contract, which in French law is assigned to onerous contracts, participates in both rationales, as if you sell a thing while remitting half the price.

b) **From their form, α) Consensual**, which are perfected by consent alone—as, in French law, a sale—and *real*, which take their beginning from the thing delivered: a pledge, a loan for consumption;

β) **Solemn**, for which the law has prescribed a peculiar form pertaining to their very existence: thus an agreement concerning the regime to which, after the marriage has been contracted, the goods of the spouses will be subject; and *simple*, which can be made in any form sufficient of itself: thus, today, most contracts;

γ) **Express and tacit**, according as consent is declared by words or by other signs, as if a defendant approaches a legal expert who is to become the advocate of his case, and the latter in fact defends the case.

N.B. Jurists sometimes derive from a *quasi-contract*—a tacit contract—an obligation which proceeds from a law presuming consent: as in the management of another's affairs, when the owner must ratify what another did in his place.

c) **From their effect, α) Unilateral**, which produce an immediate obligation of justice for one party alone, and *bilateral*, which produce it for each party, so that one obligation is the cause of the other. I say *immediate*, and not merely from a consequent fact: thus a deposit is judged a unilateral contract, although the depositor himself can be bound for losses proceeding from a defect of the thing deposited.

You should observe that this division does not coincide with the first. For an onerous contract, such as a loan at interest, can be unilateral.

β) **Naked and clothed**, according as by themselves they generate only an obligation of conscience or also a civil action. The former obligation is called *natural*. Cf. below, chap. 3, Scholia.

γ) **Valid and firm, and invalid and infirm**, according as the obligation of conscience itself either fully obtains, is empty, or is in some manner unstable. An act which is efficacious until it is invalidated by a judge is not rarely called *rescindable*; and, more strictly, in French law that word applies to a contract against which an action can be brought on account of lesion, or loss suffered.

Now an act to which the law does not furnish civil protection is less firm, whether it condemns or prohibits the act, or merely ignores it.

289. Consequences to be kept in mind. 1. From the definition itself, a contract contains a voluntary commutation of rights, which rests wholly upon consent as its proximate but adequate cause.

2. Every contract consists in a certain condition given or a promise of someone offering, and the acceptance of the other person. Before this acceptance, that condition is called a *pollicitation*, which is therefore described as: *the promise of the offerer alone*. Moreover, in a bilateral contract there are two promises and acceptances.

3. **The obligation of a contract**, since it is an obligation of justice, places a title in the other person, or denotes a debt on account of the other's right. Cf. nos. 11, 14. And this obligation is to be distinguished from the obligation of fidelity. Hence it will be useful to say a few things concerning the latter.

290. The obligation of fidelity.²

² Concerning this obligation, cf. Vasquez, on the Third Part, vol. 4, disp. 6, *On Marriage*, at the end; and C. de Lugo, disp. 23, nos. 1-15 and 41.

1. By this obligation someone is bound to do what he said he was going to do. Yet not every signification of an intention concerning a thing to be done by oneself imposes this burden of carrying it out. But if someone, while signifying such an intention, at the same time wills that the other believe and trust him, the intercourse of men among themselves, which rests upon mutual faith, demands *per se* that this intention be satisfied.³ Therefore, the proximate rationale of the obligation is the pledging of one's faith, that is, of the quality which makes a man worthy of being believed and trusted; while the remote rationale is the necessity of the intercourse of men among themselves, to which frauds are opposed.

³ God also owes it to Himself to keep His promises. The rationale of this necessary will is not some requisite of human society. But since that infinite Goodness and Holiness necessarily reduces all things to Himself, it is necessary that He conciliate for Himself the greatest confidence of creatures through absolutely inviolable fidelity. Cf. in the first volume the similar rationale of divine veracity.

2. There is, therefore, a certain similarity between truth and fidelity. Each obligation is ultimately sought from the good of social communication: whether you have spoken or promised, you intend to establish credibility and will that the other believe you; the other person is deceived by false speech just as by inconstancy in promises. Indeed, each—both he who keeps his promises and he who speaks true things—brings it about that there is a certain conformity between words and deeds: the former procures that the things which he says come to be; the latter, that he says the things which are. Nevertheless, we would not follow Vasquez and C. de Lugo in pursuing this similarity so far that in each case we see the formal obligation of making signs agree with the thing signified. For he who departs from truth is called a liar, while he who does not stand by his promises is unfaithful, and he is not said to deceive by falsehood but by inconstancy. For he who trusts someone's promises commits himself to the constancy of the other. But in order for someone to trust promises, it is first necessary that he believe words. And for a twofold cause someone's promises are made of little account: either because, lacking the intention of carrying them out, he appears to promise fictitiously, or because he does not appear likely to keep true promises. We charge a fictitious promise with falsehood, but not with infidelity strictly so called—against C. de Lugo, work cited, no. 5; and if perhaps there is an obligation materially to carry out the fictitious promise, its cause will never be the promise itself, but the rationale of avoiding scandal, harm, etc. Hence he who makes a fictitious vow, that is, promises God, is *per se* neither bound by the vow nor judged to sin gravely. Cf. St. Alphonsus, bk. 3 (4), no. 201, q. 2.

3. Between a promise from justice and a promise from fidelity there is this difference: by the former a right is granted; by the latter faith is given. The title of the former obligation is in the other person; that of the latter is in the promisor, who, if he is unfaithful, derogates not from the right of another but from his own fidelity. The former is *per se* grave; the latter *per se* light. He who has a right can, when a sufficient rationale is present, take what is his secretly; this is not licit for him to whom something is owed from fidelity. Since no one acquires a right from another unless willing, a promise does not oblige from justice before the positive acceptance of the other person. On the contrary, nothing *per se* prevents you from being bound from fidelity without the positive assent of the other. If, however, he positively refuses or remits the obligation, he will no longer be deceived if you change your intention; hence the obligation of fidelity will at the same time be removed.

Finally, if the promise concerned a thing and did not regard one's own act, each obligation *per se*, as C. de Lugo, disp. 23, no. 98 ff., and others say, passes from the deceased to the heirs. Nor is this doubted concerning the obligation of justice. As regards the obligation of fidelity, C. de Lugo offers this rationale: goods are indirectly affected by such a promise. We rather judge that the matter is to be evaluated from the will of the deceased. If he willed absolutely to stand by his promises, he is truly judged to bequeath the thing to the promisee. The heirs will then be bound by an obligation of justice to execute that legacy. This legacy, however, will be infirm by positive law unless it is contained in a valid testament.

4. Toward God we are bound by no obligation of justice strictly so called. The general rationale indicated in no. 6 stands in the way. Moreover, where a promise is in question, His will to acquire a new right is not established. On the other hand, He cannot be deceived either by our fiction or by our inconstancy, which is too well known to Him. Therefore, the rationale of the obligation of fidelity also appears to be lacking.

But that alienation of freedom through the promise of some better good, that is, a vow, contains a greater humiliation of one's own will beneath the divine will and, by confirming us in good, so perfects us that it is already apparent of itself that it ought to be an efficacious cause of a duty of religion. Add to these that negligence in keeping promises argues *per se* a lesser estimation and a certain contempt of the person to whom they were made. The irreverence which is therefore inherent in the violation of a vow is necessarily opposed to religion. Finally, that vows are sanctioned by God is established from clear testimonies of Sacred Scripture. But because it pertains to religion, the obligation of a vow becomes grave by its genus and is to be estimated from the necessity of the virtue of religion.

5. Therefore, the rationale of a promise is threefold: a *vow*, which obliges from religion; a *contract*, which obliges from justice; and a *simple promise*, which obliges from fidelity. Through a mere resolution nothing *per se* has been detracted from freedom of the will, except that levity and inconstancy, even if no one is deceived, already contain a certain venial disorder.

291. Ordering of the question. 1. Of the three elements of contracts, the first, the thing or object, does not seem to be called into controversy. For the required qualities are sufficiently established, which come down to this: that the object be possible,⁴ capable of valuation by price, and sufficiently certain or definite. Otherwise, the agreement would be fruitless or trifling.

⁴ We refer to this the requisites by which a thing is said to have to exist, at least in hope, and to be capable of commerce.

2. They will the cause to be true and licit. Hence, in the first chapter, we shall weigh the effects of agreements whose cause is shameful.

3. We shall remain longer upon the principal element of consent, so that we may attain a more perfect account of contracts. Accordingly, we shall divide the second chapter into three articles, in which we shall dispute in order:

- a) Concerning the necessary qualities of consent;
- b) Concerning the defects of consent;
- c) Concerning the necessary notification of consent.

Finally, in the third chapter, we shall investigate what force is inherent in civil laws which render juridical acts invalid.

Chapter I: The Shameful Cause of Contracts

St. Thomas, II-II, q. 32, art. 7, corpus; q. 62, art. 5, ad 2; Lessius, *On Justice and Right*, chap. 14, nos. 51-61; chap. 18, nos. 17-21; C. de Lugo, *On Justice and Right*, disp. 18, sect. 3; Carrière, *On Contracts*, nos. 328-338; Waffelaert, *On Justice*, I, 413-418, 473-481; Lehmkuhl, *Moral Theology*, I, 1052-1054; Ballerini-Palmieri, *Moral Work*, vol. 3, pt. 3, *On Contracts*, nos. 61-74; P. Van der Velden, *Principles of Moral Theology*, vol. 1, no. 112.

THESIS XX

A contract whose cause is shameful has no force; nevertheless, after a shameful act has been performed by one party, the other party already owes *per se* from justice the fulfillment of the promise of an indifferent thing.

292. I. State of the Question. 1. INTENTION OF THE THESIS. This tends toward our endeavoring, by assenting to the far more common opinion, to resolve the question concerning a shameful contract.

A contract, however, becomes shameful from its *cause strictly so called*. It does not become so from another evil end which, although perhaps it moves one making the agreement, is nevertheless extrinsic to the agreement: as if, with the intention of bloody vengeance, you buy a sword. Nor does it become so from an *illicit thing*, concerning which the most honorable stipulations can be made: as if you promise a penalty in order to avert a crime more effectively. Moreover, a cause will be shameful which is directed toward something that is morally dishonorable of itself or by law:¹ as if one party promises a sin.

¹ It is not equivalent to require, as our laws do, a licit cause (arts. 1108, 1131, French Code). For many things today are placed among licit things which are opposed to right morals; other things which are commanded by a higher law are prohibited by human statutes; nor does the civil law itself always intend to bind conscience by its commands.

Now then, all indeed confess, and it is plainly established, that a contract by which one party is bound to perform something which it is unlawful for him to perform—for example, homicide—is *per*

se null and invalid: this is the first part of the present thesis. But if it should happen that the shameful thing has been performed, it is more doubtful what right, after the act, belongs against the other contracting party. And our position is that he who performs the dishonorable act can demand money or some other thing, indifferent of itself, which the other had promised by agreement in return. For example, someone made this agreement with another: "I promise you one hundred if you inflict such an injury upon Titius." The injury is inflicted in consequence of the promise; we contend that the hundred which the former promised are to be paid from justice.

By what title this is to be demanded, and by what limitations it is to be circumscribed, will appear clearly from what is to be said below.

2. OPINIONS. With the first part omitted, concerning which, as we said, all agree, St. Augustine² already has words which can be accommodated to our opinion only with difficulty.

² Epistle 54 to Macedonius (otherwise 153; Migne, P.L., vol. 33, col. 653). Lessius, no. 55, attempts to explain those words, but in vain, as it seems to us. Cf. C. de Lugo, disp. 18, no. 56.

St. Thomas expressly permits at least this: that the price paid for a dishonorable performance be retained. Cf. II-II, q. 32, art. 7, corpus; and q. 62, art. 5, ad 2. Lessius,³ C. de Lugo, work cited, especially no. 59, and the ancients commonly openly defend our opinion. St. Alphonsus, bk. 3 (4), no. 712, holds it as the more probable and common opinion. It also prevails among more recent authors, such as R. P. Lehmkuhl and Ballerini-Palmieri, who vigorously defends it. Some, however, follow the contrary side. Thus Beusch, *On Agreements and Contracts*, chap. 4; C. Gousset, *Moral Theology*, vol. 1, no. 753; Carrière, *On Contracts*, no. 333; and Van der Velden, O.S.F., work cited.

³ Chap. 18, no. 18. Cf. also chap. 14, no. 52.

But lest these men be understood incorrectly: for they circumscribe their opinion to the price of the shameful thing as such. For it happens that the substance of a thing honest of itself becomes vicious from the circumstances: for example, servile works are demanded and performed on Sunday. Then they will indeed deny that the perhaps greater price which you illicitly promised so that work might be performed on a feast day must be paid; but they will acknowledge that the demand for the customary wage, of which the work is worthy of itself, is just.

3. THE TERMS ARE EXPLAINED.

A contract whose cause is shameful: these things are clear from what was said in nos. 287, 2, and 292, 1.

Has no force, even before every sentence; or it is absolutely null, nonexistent.

Nevertheless, after a shameful act has been performed by one party: therefore, after the unjust performance which he had promised by contract has been made.

The other party already owes from justice, commutative justice. Therefore, not only can that which is voluntarily paid be retained, but the payment itself can also be demanded. The title, however, as we shall see, is distinct from the prior agreement.

Per se: that is, unless positive law, on account of the common good, affects the guilty person with this penalty: that he receive no recompense, not even indirectly, from the offense.⁴

⁴ Concerning our law, cf. no. 298.

The fulfillment of the promise of an indifferent thing. For if the counter-promise itself concerned an illicit thing, it must be performed for no reason. And we posit that the price promised is not prodigal; otherwise, it must be reduced to a just quantity.

II. Proof.

293. A. OF THE FIRST PART. A contract whose cause is shameful has no force.

A contract whose obligation is null is of no value.

But. The obligation of a shameful contract is null. **Therefore.**

The major is apparent, because the proper efficacy of a contract is this: that it gives rise to an obligation, especially since an immediate transfer of a real right is not now in question.

Something could indeed have been given from the agreement so that the other would assume this shameful obligation; but if this obligation is null, the thing itself, if received, would be retained without cause and therefore would have to be restored, so that what was being said is true: a contract whose obligation is null effects nothing.

To the minor. For the shameful promise either stands alone, as in a unilateral contract; or, if, as in a bilateral contract, it has as its cause an obligation assumed by the other party, this latter obligation, as correlative, will fall with it. **But.** There is no obligation from a shameful promise. **Therefore.** There is no obligation of a shameful contract.

This minor is proved. The law of nature—by which every obligation is ultimately established—cannot oblige the same person immediately and principally to one thing, and mediately and less principally to the contrary. For otherwise a contradiction would have to be admitted in the law itself. **But.** It obliges everyone immediately and principally to omit a dishonorable action. **Therefore.** It cannot, with a contract interposed, oblige him to perpetrate the same action; or, there is no obligation from a shameful stipulation.

N.B. If you consider a shameful action as an action morally impossible, or one for which there is no moral faculty, you will construct the argument by an almost similar rationale. For example: If someone owes the fulfillment of a shameful promise, the other has from justice a right to demand it. **But.** The law of nature cannot grant the moral faculty of demanding from someone that which it takes away his moral faculty of performing. **Therefore.**

294. B. OF THE OTHER PART. Nevertheless, after a shameful act has been performed by one party, the other party already owes *per se* from justice the fulfillment of the promise of an indifferent thing.

If you have performed for another something capable of valuation by price with the intention that he be bound by a reciprocal and definite obligation, he, by the consent with which he admitted a performance so made, will be bound *per se* from justice, unless nature is proved to reject that obligation.

But. The shameful work in question is an actual performance of this kind; nor is nature shown to be contrary to this obligation. **Therefore.**

To the major. For it is the customary form of a real contract which they call *unnamed* and present in this formula: *Facio ut des, vel ut facias* [I do so that you may give, or so that you may do]. The same is

directly apparent from this: every consent which, like the consent described, has legitimate matter and cause is *per se* an efficient cause of an obligation, unless nature rejects this obligation.

To the minor. **a) A shameful act is capable of valuation by price.** For there can be inherent in it the rationales of an action that is pleasurable; useful—not absolutely, but for some chosen end; laborious; burdensome to the one doing it; and dangerous. Moreover, the faculty of doing it is proper to the agent. **But.** These aspects of what is proper to him are capable of valuation by price through agreement. **Therefore.**

b) It is apparent that the act was *performed with the intention of obliging the other*.

c) The other admitted the performance so made. For he who stipulates thus, “If you do this, I promise you one hundred,” while that consent remains, virtually holds the same thing as accepted if it is done with the intention of obliging him to pay the hundred. Nor can he free himself by revoking his consent unless he has warned the other not to act. Otherwise, as an unjust deceiver, he will be bound for the losses.

d) Nature is not shown to be contrary to this obligation. For repugnance is shown neither from the object, nor from the cause, nor indirectly from the consequences. And indeed, the object posited is the payment of an indifferent thing; the cause is the act, not formally insofar as it is shameful, but insofar as it is something capable of valuation by price, consisting in real being. The consequences which would stand in the way of sanctioning the obligation would be favor granted to the shameful thing and encouragement given to sinning.

But now the offense itself, since it has already been perpetrated, can no longer be efficaciously favored; and similar deeds are no more promoted *per se* if you grant this sanction than if you deny it. For if the hope of obtaining a reward moves someone to commit an offense, the hope of owing nothing moves someone to persuade others to commit offenses and to deceive simpler persons. Therefore, if any favor is taken away from the one carrying it out, it is at the same time granted to him who is more guilty, namely, the instigator or author. Since, therefore, although consent was given illicitly and the promise was made, nevertheless no universal rationale of the common good demands that this obligation be rendered infirm, nature could only leave to positive law the discretion of introducing that infirmity when opportune.

Cf. what C. de Lugo disputes concerning an illicit sale and its validity, disp. 18, no. 48.

Confirmation. According to the unanimous opinion of the ancients, a promise of marriage made so that a young woman would admit fornication induces an obligation of marriage if the condition has been fulfilled. Now, if our position were false, this obligation could certainly be demonstrated with greater difficulty from the necessity of repairing the loss alone, because the young woman could be judged to have acted at her own risk, since she knew the promise to be inefficacious. Cf. C. de Lugo, disp. 18, no. 59.

295. III. Difficulties. We shall reduce them to a few classes. They argue:

1. FROM THE ACT CONSIDERED IN ITSELF.

a) An illicit action is not worthy of a price.

Reply. Insofar as it is formally illicit, **I concede**; insofar as it is agreeable, useful, or laborious, *I subdistinguish*: insofar as a price is illicitly promised, **I concede**; insofar as it is not capable of valuation by price and is of itself promised invalidly, **I deny**. Cf. Marrès, *On Justice*, bk. 3, no. 160.

b) There is no price for a thing which cannot be sold. **But.** That cannot be sold over which someone does not have free disposition, as is the case with a dishonorable deed. **Therefore.** There is no price for a shameful performance. **Therefore.** Whether before or after the deed, there is no cause why the price should be owed.

Reply. I distinguish the major: a thing which cannot be sold either validly or licitly, **I concede**; which can be sold illicitly only, **I deny**. **To the minor:** that cannot be sold over which one has free disposition neither physically nor morally, **I concede**; over which one has physical disposition although not moral disposition, *I subdistinguish*: it cannot be sold licitly, **I concede**; validly, **I deny**.

2. FROM THE NULLITY OF THE PRIOR CONTRACT.

a) The obligation of paying the price was null at the beginning. **But.** What is null from the beginning is not made firm by the passage of time. **Therefore.**

Reply. I concede the major and the minor. I deny the supposition: that the rationale of firmness is taken from time.

It is derived from the changed circumstances, since, after the deed, the obligation to pay no longer has as its cause the obligation of the shameful action—an obligation which cannot exist—but the shameful deed, which physically existed, far from being impossible.

b) Nothing comes from nothing. **Therefore.** From a null contract an obligation to pay cannot arise.

Reply. I concede the antecedent and the consequent, and I deny the supposition. Or, *I distinguish the antecedent and the consequent*: nothing comes from nothing as from a cause *per se*, **I concede**; *per accidens*, or on an occasion, **I deny**.

An obligation cannot arise from a null contract as from a cause *per se*; but, on account of the elements which remain, it can be the occasion of another valid contract from which an obligation to pay arises.

Instance. But. It cannot even be the occasion. For the valuation and determination of the price to be paid was made by the prior agreement, which is null. **But.** This prior agreement, being plainly null, was null also as regards the determination of the price. **Therefore.** The price has not been determined. **But.** It is required that the object of an obligation be determined. **Therefore.** There is no obligation to pay.

Reply. I distinguish the major. The determination of the price was made by the prior agreement as something essentially cohering with it, **I deny**; as something concomitant, **I concede** or **I pass over**.

Indeed, when a thing is delivered for a price—or for another thing which has the place of a price—it is necessary that the price be established in some manner, so that the obligation to pay may be certain. But just as the price can be defined by common estimation without any particular agreement, so too it can be determined by a certain prior convention which does not necessarily introduce other conventions. For example, it can be agreed between us that whenever I ask you for a certain definite performance which you actually perform, your labor shall cost me so much. Perhaps thereafter I shall never ask; but if I do so, the price to be paid by me will be certain to us from another source.

Therefore, when the obligation is contracted and the price defined at the same time, the stipulation concerning the price can be regarded as something concomitant, which can therefore be retained materially, although the principal agreement wholly collapses. This remains true: such a work was valued at so much.

3. FROM THE CONSEQUENCES.

a) He who pays the price after the wicked work has been perpetrated approves it anew, which is illicit.

Reply. I deny that this approval is necessarily contained in the payment. For someone can detest the deed and nevertheless will to stand by his promises. Cf. C. de Lugo, work cited, no. 55.

That difficulty proves too much. For it would thereby already become illicit to give the price, which no one will say.

b) The natural law which sanctioned this obligation would incite to sin, for it would incite to the shameful deed by which the price could be exacted.

Reply. a) I retort the argument. The natural law which rendered an obligation of this kind invalid would incite to sin, for it would incite men to promise rich payments for wicked actions, since a promise which can be violated with impunity is made more easily. And since the one commanding the deed is more the cause of the evil than the one carrying it out, it would favor sins more than in the prior case.

β) **Directly.** It would incite to sin *per se*, **I deny**; *per accidens*, **I concede** or **I pass over**.

For although it permits a certain temporal utility to be received from sin, at the same time it threatens eternal ruin. Hence *per se* it very greatly turns minds away from sin; *per accidens* it happens that some are moved more by a small temporal gain than by eternal punishment or reward. But if the natural law therefore had to render contracts of this kind infirm, a marriage celebrated against the just will of parents would be invalid, the father of a family would strive in vain to dissipate money, and so forth. Cf. Lehmkuhl, vol. 1, no. 1053.

COROLLARY.

296. The proximate cause of this obligation is not the shameful contract itself, which is wholly dissolved by the law of nature, but an unnamed contract which is not shameful and which nature afterwards introduces in its place.

SCHOLIA.

297. The case of retention and of petition is equal. Those who concede that a price paid for a dishonorable deed can always be retained, if they wish to speak consistently, must embrace our position. For by what title will it be retained? If as a price, then it was owed from justice; if as a donation, a will to bestow a favor is required, which will often be lacking, as C. de Lugo, work cited, no. 46, argues very well against Vasquez. The latter, moreover, does not contradict our thesis.

Therefore, we can invoke St. Thomas as positively agreeing with us.

298. Under French civil law, he who pays a price promised on account of a shameful cause has, even after the deed, a personal action, or an action for recovery of what was not owed, to reclaim the

payment—unless, however, as many except, the shamefulness affected each party to the agreement: for example, that money was paid to a young woman so that she would consent to fornication. This money cannot be reclaimed. Cf. Aubry and Rau, *Droit civil français* [*French Civil Law*], vol. 4, § 442 *bis*. Yet by that law someone will not be prohibited from retaining the price paid with a safe conscience until restitution has been commanded by the sentence of a judge. Cf. thesis 24.

Chapter II: The Consent of the Contracting Parties

Article I. The Necessary Qualities of Consent

Vasquez, *On the Third Part of St. Thomas*, vol. 4, tract *On Marriage*, disp. 6, chap. 2; Molina, tract 2, disp. 266, 267; Lessius, chap. 18, dub. 5 and 6; C. de Lugo, vol. 2, disp. 22, sect. 4; disp. 23, sects. 2-5; Carrière, *On Contracts*, nos. 19-47; Crolley, *Theological Disputations on Justice and Right*, vol. 2, disp. 3, § 4.

§ 1. Notions and Conclusion

THESIS XXI

True or internal consent, manifested by an external sign and mutual among the contracting parties, pertains to the essence of every agreement.

299. I. State of the Question. 1. INTENTION OF THE THESIS. The very description of a contract shows that some rationale of consent is necessary. What kind is demanded for the efficacy of every agreement, we here inquire into and define, requiring consent which is at once internal, external, and mutual.

2. OPINIONS. These conditions seem indubitable and not to provide an occasion for disputing. Nevertheless, Vasquez,¹ on account of his definition of a promise, contends that it is impossible for words of promise to be uttered without the will of promising; but that, if it can be done, such a promise will oblige no less than if it were made with the will of promising. Some assent to him, against the common and certain opinion which we defend by this position. Cf. C. de Lugo, disp. 22, no. 45 ff.; Carrière, *On Contracts*, no. 21. The most common doctrine likewise, with St. Thomas, II-II, q. 88, art. 1, corpus, holds that external consent is required, although Molina, disp. 266 (from no. 8), considers it doubtful when a gratuitous contract is in question.

¹ Diss. 6, chap. 2, in the tract *On Marriage*, which, being overtaken by death, he could not complete, and which is found at the end of his *Disputations on the Third Part of St. Thomas*. The definition of a promise is handed down in no. 14.

3. THE TERMS ARE EXPLAINED.

Pertains to the essence of every agreement. We ask, therefore, with what qualities consent must be adorned so that, by the law of nature itself, a contract can subsist. We do not deny that other requisites can be superadded both by the contracting parties and by positive law; rather, we inquire into the minimum which is necessary.

True or internal consent pertains to it: consent is of this kind if the mind agrees with the words or signs which indicate assent. But when a contract is made only externally and apparently, without the intention of contracting, the consent is called *fictitious*.

External consent was already held by Vasquez to be true; his opinion gave us cause to say: *true or internal*.

Manifested by an external sign. Silence itself, in certain circumstances, can disclose consent. Hence the common saying—yet to be accepted cautiously: “He who is silent is regarded as consenting” (rule 43, *On Rules of Law*, bk. 6).

And mutual among the contracting parties: by these words we signify that it is required not only that each party consent, but that the consent of each concur in the same object, in the same contract—not by a merely material identity of occurrence, but formally, so that they constitute one moral thing.

300. II. Proof. A contract is, from its very definition, a *voluntary commutation of rights*. Therefore, that consent is essential to every agreement which alone can be the adequate cause of the commutation of rights.

But. Consent of this kind cannot be such a cause unless it is true or internal, external, and mutual. **Therefore.**

The first inference is apparent; hence,

To the minor. A commutation of rights does not signify a simple extinction of a right or the assumption of an obligation in one person, and the acquisition of a similar right by another, but the *formal transfer of the same right* from one to another, the *immediate succession* of one person into the place of another in the same right, by which one loses a right or obliges himself in order that it may be acquired by the other; while the other acquires dependently upon the loss by the former. Cf. above, no. 222.

But the cause of a transfer cannot be voluntary unless there is:

1. TRUE OR INTERNAL CONSENT. Argument 1. That which does not exist effects nothing. **But.** Fictitious consent is consent only in appearance. **Therefore.**

Argument 2. From a promise. “A promise is a private law which the promisor imposes upon himself and by which he binds himself.” **But.** Without the intention of binding oneself, the law does not subsist. **Therefore.** Cf. C. de Lugo, disp. 23, no. 4; and St. Thomas, II-II, q. 88, art. 1.

2. EXTERNAL CONSENT. This appears necessary in every respect. For if, in a contract, you consider the rationale of the *transfer* of a right from one to another, this implies the intercourse of men among themselves, which does not exist without external signs; if you consider the *obligation* which has arisen, this is correlative to a right, which can in no way be granted to the other by the merely internal and hidden consent of the former, since a right, as a faculty of the will, ought *per se* to be capable of being known; finally, if you consider the *thing itself*, the object of the right, a merely internal act cannot connect it in a sensible or human manner with him who acquires the right, so that others can and ought to respect that relation of the thing to the person. Cf. C. de Lugo, disp. 23, no. 31.

Or, still more briefly: Such consent is required as can effect a change of rights *among men*. **But.** Among men, merely internal consent is as though it did not exist and therefore can effect nothing. **Therefore.** External consent is required.

3. **MUTUAL CONSENT**, in the rationale explained: a) insofar as the consent of *each party* is required. For on account of the personal independence of each, neither can be obliged or acquire a right by the consent of the other, but only by his own consent.

b) Insofar as they *concur formally in the same thing*. For unless one formally wills to acquire from the other, by such an agreement, that very thing which the other wills to grant to him through this agreement, there will not be an immediate succession from consent as a complete cause.

301. III. Difficulties.

1. **AN EXTERNAL PROMISE NECESSARILY IMPLIES A TRUE PROMISE**. He who voluntarily utters defamatory words necessarily defames, although he wills not to defame. By parity of reasoning, he who voluntarily utters promissory words necessarily promises (Vasquez, work cited, no. 17).

Reply. I deny the parity.

The effect of defamation is obtained from words uttered externally; the effect of a promise is not so obtained, for its cause is the will binding itself. Indeed, for defamation which is formal in the terminus (nos. 143, 145), not even the intention of uttering the words is required. Therefore, this argument, if it were valid, would prove too much.

Instance. But. There is parity. For an external promise is nothing other than “an affirmation and a certain enunciation of a thing to be done in the future, intimated to him for whose favor and utility or service the thing is to be done.” **But.** As soon as the words of a promise are voluntarily uttered, this definition is present. **Therefore.** (Vasquez, work cited, no. 14.)

Reply. I distinguish the major: a thing to be done in the future from an obligation imposed upon oneself by the will—then **I concede** or **I pass over the major**; a thing to be done in the future, that is, a thing which is foreseen as future, or whose obligation flows from a certain injurious deed, such as deception, **I deny. I contradistinguish the minor.** As soon as the words are uttered, that definition is present: in the former sense, *I subdistinguish*: if the internal intention was present, **I concede**; otherwise, **I deny**; in the other sense, **I concede**.

The definition, understood in the manner which we have rejected, applies to the enunciation either of a freely conceived resolution—as C. de Lugo, disp. 23, nos. 7-9, shows well—or of a debt arising from an offense.

An external promise is rather the speech of a will binding itself to perform something for another. Where such a will is not present, there is, strictly speaking, no speech of it.

Instance. But. That definition is always present in the former sense, which was conceded.

For he who does not keep an external promise of this kind is called unfaithful.

Reply. He is called unfaithful in a certain broader sense and because he is presumed not to have made this fiction, **I concede**; in the strict sense, **I deny**. Cf. no. 305.

Instance. But. In the strict sense. For the obligation of fidelity is an obligation of a certain veracity. **But.** Veracity requires that the sign agree with the thing signified and therefore that deeds agree with the words by which they are promised externally. **Therefore.** An external promise gives rise to an obligation of fidelity.

Reply. I deny the supposition.

We are treating the obligation of justice, while the argument is drawn from the obligation of fidelity. Moreover, in what manner the things said concerning this latter obligation can be conceded, cf. above, no. 290.

2. EXTERNAL CONSENT IS NOT REQUIRED.

a) Words and signs have no power except from the interior act. **Therefore.** The latter suffices, since it appears to contain the whole power (Molina, tract 2, disp. 266, no. 9).

Reply. I distinguish the antecedent, that is: they do not operate except in virtue of the interior act, **I concede**; with this power posited, they effect nothing instrumentally, **I deny. I distinguish the consequent**: the interior act suffices if words contain no instrumental power, **I concede**; otherwise, **I deny**. To the necessity of how many instruments could the same difficulty be opposed!

b) By positive law, certain donations are valid without any acceptance. **But.** Then there is no longer any rationale for demanding an external sign. Besides, positive law cannot derogate from nature. **Therefore.** (Molina, work cited, no. 10.)

Reply. In such a way that they oblige from justice, **I deny**; from fidelity or religion, when, for example, you have made a vow to God rather than a promise to another man, **I concede** or **I pass over**. And the minor could rather be denied as well, with C. de Lugo, disp. 23, no. 34.

Certainly, sometimes it is not the donee himself, but another who represents a man or a pious institution, who perfects the contract by his acceptance; but that there is a case in which, without any acceptance, an obligation of justice formally arises, C. de Lugo rightly denies, and he explains the more difficult cases in disp. 23, no. 42 ff.

c) If yesterday, by a merely internal act, you promised something to someone, and today you disclose to him your unrevoked promise of yesterday, you will be bound from yesterday's internal promise by the promisee's acceptance. **Therefore.** (Molina, work cited, no. 11.)

Reply. I distinguish the antecedent. If your speech today has the rationale of a notification, **I concede**; if it has the rationale of a speculative narration, **I deny**—unless perhaps the other, taking possession of the thing, can retain it under this title because he knows that you do not urge your right to restitution. Or even then, the taking of your thing can be a kind of petition to which you tacitly assent. Cf. C. de Lugo, disp. 23, no. 34.

d) By an internal act alone you can lose possession or ownership. **Therefore.** By parity of reasoning. (Molina, work cited, no. 12.)

Reply. 1. I distinguish the antecedent. To lose it in an irrevocable manner and in a manner which binds me, **I deny**; otherwise, **I concede**.

So long as this has not appeared externally, no one will be able to take possession of the thing against my will.

2. I also pass over the antecedent. I deny the parity.

Here the question concerns not losing a right but communicating it to another.

e) He who violates a merely internal promise is unfaithful. (Molina, work cited, no. 13.)

Reply. Either **I pass it over**, because we are not treating the obligation of fidelity; or **I deny it**, because he is unfaithful to no one who deceives no one.

f) He who confirms a merely internal promise by an internal oath is bound gravely by this promise. (Molina, work cited, no. 14.)

Reply. Insofar as the oath has the force of a vow, **I concede**; otherwise, **I deny**. Cf. C. de Lugo, work cited.

3. AT LEAST IN GRATUITOUS CONTRACTS, EXTERNAL ACCEPTANCE IS NOT REQUIRED.

a) “If you have Peter's book on loan, and he writes to you donating the book: by the very fact that, after reading the letter, you accept the gift, you are regarded as sufficiently acquiring ownership of the book without another external act, and you can dispose of that book.” **Therefore**. From use and practice, external acceptance is not required. C. de Lugo, disp. 23, no. 64.

Reply. I distinguish the antecedent. You can dispose of that book because you accepted only internally, **I deny**; because in a matter of mere favor you sufficiently declare your consent either by the very disposition of the book or, even earlier, by silence itself, **I concede. I distinguish the consequent likewise.**

b) “If an external action were necessary, ... it would suffice for this end that, alone in your room, after reading the letter, you say in a perceptible voice: I accept. But this seems wholly superfluous.” C. de Lugo, work cited.

Reply. I deny that this would suffice.

For external acceptance is required in order to human intercourse, so that it can therefore be established among men. Cf. Carrière, nos. 27, 28.

c) “Acceptance is required insofar as no one is to be compelled against his will to acquire something new; but for this internal consent and acceptance suffice.” C. de Lugo, work cited.

Reply. I concede the first part of the assertion, which stands in the place of the major. But I deny the other part, that is, the minor, by which it is said that internal consent suffices for this. For consent, as soon as it is required, must be such that rights can be changed among men. But merely internal consent cannot found a right which must be observed by other men, since it can be violated.

4. THE CONSENT OF BOTH PARTIES IS NOT REQUIRED.

a) Otherwise positive law could not bring it about, as it sometimes does, that certain donations not yet accepted cannot be revoked.

Reply. I deny it. For the legislator can bring this about, either because he himself meanwhile accepts under a condition, in the name of the moral person—for example, the one to whom the donation is offered—or because, on account of the public good, he binds the will of the citizen with a stricter bond than the offer bears of itself. Cf. C. de Lugo, disp. 23, no. 40; Lessius, chap. 18, no. 40.

b) An obligation arises not from the will of the one accepting but from the will of the one promising. **Therefore**. Acceptance is not required for an obligation.

Reply. I distinguish the antecedent. The obligation does not arise from the will of the one accepting as from an adequate or primary cause, **I concede**; as from a partial cause, *I subdistinguish*: if it is an obligation of justice, **I deny**; of fidelity, **I concede** or **I pass over**.

For an obligation of justice arises from the concurrence of both wills, to which the will of the one accepting pertains. Or, if you prefer, there is no obligation of justice toward another unless the other has acquired a right; but he does not acquire it except by his own will. Therefore, this will has a partial efficiency. Cf. C. de Lugo, work cited.

c) After a debt has been remitted by the creditor, even before any acceptance, the debtor is freed from the obligation of paying; for the debt can remain unpaid without the creditor's being unwilling, just as another's thing can universally be retained without the owner's being unwilling. **Therefore**. At least acceptance is not always required.

Reply. I distinguish the antecedent. Before acceptance, the debtor is indeed freed from the obligation of paying, in a revocable manner and while the same will of the creditor endures, just as another's thing can be retained—as another's thing—before acceptance, **I concede**. He is freed in an irrevocable manner, so that he has acquired a right by which he becomes immune from an action by the creditor, and another's thing can now be retained as one's own, **I deny**. Cf. C. de Lugo, disp. 23, nos. 53-55.

By acceptance, however, he acquires that right; that is, the right which the creditor had passes to him. But since he is at the same time the debtor, and no one can owe anything to himself, that right is extinguished in him by confusion. Thus C. de Lugo, work cited, no. 60 at the end.

By a similar rationale, by will alone someone cannot so lose ownership that, before another takes possession of the thing as abandoned, he cannot justly resume it after changing his will. Concerning these things, cf. C. de Lugo, work cited, nos. 56-60.

5. AT LEAST CONSENT STRICTLY MUTUAL, OR THE MORAL UNION OF EACH WILL, IS NOT REQUIRED.

He who takes possession of another's thing while ignorant of the latter's consent, and afterwards is informed that the other was not then unwilling; or, generally, he who takes something for himself from the presumed will of the owner, can retain the thing. **But**. Then there is no moral union. **Therefore**.

Reply. I divide the major. As regards the former assertion: he can retain the thing either as having been made the property of the first occupant, if it was then simply abandoned; or so long as the other does not change his will, that is, does not exercise his right, **I concede**. He can retain the thing as acquired for himself by contract, **I deny**. **As regards the other assertion:** he can retain the thing in such a way that he has acquired a right against the person whose consent he presumes, **I deny**; because the other does not exercise his right, which he has not lost, **I concede**.

You should distinguish the non-use of a right from the cession of a right. Yet it can happen that he whose will is said to be presumed has given such signs by which he offers things, as it were, perpetually. Thus merchants act who publicly announce that they will buy or sell certain merchandise at a price already defined. Indeed, for the required moral union to be present, it will then suffice *per se* if this permanent offer is accepted.

§ 2. Supplements to the Doctrine

I. COROLLARIES.

302. How each consent operates. Each consent integrates one cause, and their common offspring is an obligation, at least in one party, with the corresponding right in the other.

303. Obligation from a fictitious promise. He who promises fictitiously is never bound from the promise formally taken, since it is null; but that fiction, like every injurious and harmful action, obliges him to compensate the losses. And if the execution of the thing which he appeared to promise is the only reparation, the obligation of the promisor will be materially the same as that which a true promise would have produced. (Against Vasquez, *On Marriage*, disp. 6, chap. 2.)

304. The will not to bind oneself, not to stand by one's promises. The will not to bind oneself is also repugnant to the will to contract, since a contract implies an obligation assumed by the will.

Therefore, the contract is null if that will was absolute, or regarded the same object under the rationale under which it is promised. But if the will to contract prevails, the will not to admit one of the obligations which necessarily arise from the contract must be judged to proceed from error and to be overcome by the more efficacious and absolute will to contract.¹ Hence he who rejects some burden conjoined with marriage while he wills to contract marriage sometimes contracts validly and sometimes invalidly, as is explained in the proper tract.

¹ Again against Vasquez, work cited. Cf. C. de Lugo, work cited, disp. 22, nos. 38, 39; and *On the Sacraments in General*, disp. 8, no. 120.

On the contrary, the will not to execute the obligations of a contract does not corrupt its essence, although sometimes, when it has been externally manifested, it is an indication that the obligation was not seriously assumed. (C. de Lugo, work cited, no. 36.)

II. SCHOLIA.

305. The force of external consent. If external consent was present: a) In the external forum, internal consent is rightly presumed to have been present, or an obligation of consenting internally is imposed.

b) The other party ought not to believe the simple assertion of the other by which he says that he consented fictitiously. For why is the deceiver now worthy of greater faith than when he consented externally?

306. The required advertence. That advertence to the substance of the act is required which suffices for someone to sin mortally. And this is so even in light matter, because each person is reasonably presumed to be unwilling to be despoiled of his thing or his right except with full consent. Cf. C. de Lugo, disp. 23, no. 18 ff., especially no. 23.

307. Concerning a light obligation if the matter was grave. Although someone can be bound under a light obligation by a vow or law, even when the matter is grave of itself, this other peculiarity in a contract is commonly admitted by theologians: that an obligation proportioned to the matter is necessarily assumed. For by a contract a right is acquired by another. Now to violate another's right in grave matter is grave of itself. Therefore, if the parties absolutely do not will a grave obligation then to arise from the contract, they will have made no contract. Yet you should observe that, when a

personal obligation is in question, the matter which is the object of the contract can be changed by this intention, but not likewise where a real right is involved. For example, he who transfers ownership of a horse by contract will necessarily be bound under grave obligation not to violate that right of ownership acquired by the other. But if they will to impede this by the agreement, they will have impeded the very acquisition of ownership. Similarly, the marriage of those who will themselves to be bound only under light obligation to preserve mutual fidelity will be null. But those who have mutually promised marriage under a light obligation will not indeed have made betrothal, but another analogous contract, whose object, by reason of the light obligation, will have been made light; just as a slight hope of obtaining a horse will not have been grave matter. Cf. C. de Lugo—against Sanchez—disp. 22, nos. 40-43.

Article II. Defects of Consent

Molina, tract 2, disp. 209, 272, 273, 293, 326, no. 14, 352; Lessius, chap. 17, dub. 5 and 6; chap. 18, dub. 17; C. de Lugo, vol. 2, disp. 22, sects. 6 and 7; Carrière, *On Contracts*, nos. 48-80; Crolley, work cited, vol. 2, disp. 4; Ballerini-Palmieri, *Moral Work*, vol. 3, pt. 3, *On Contracts*, nos. 75-102.

§ 1. Notions concerning These Defects and their Effects

308. Practical rules. In practical moral discipline, where account must be taken not only of speculative truth but also of various opinions, many distinctions are handed down concerning error and fear and their force and efficacy; here there is neither time nor advantage in pursuing them with exact discussion. Yet, so that we may touch upon the chief points which must be placed before the eyes in this disputation, let precisely these things be said:

1. CONCERNING ERROR. Substantial error *per se* dissolves a contract; accidental error does not,¹ unless consent has been expressly or tacitly subjected, as to a condition without which not—I contract if such a quality is present—to the quality which is falsely thought to be present. But if that error gave cause to the contract and arose from the deceit—or fraud—of one party, the other can rescind the contract at his own discretion. Indeed, even if no fraud was committed, as soon as error was truly the cause of contracting, Lessius, chap. 17, no. 33, and St. Alphonsus, bk. 3 (4), no. 715, grant to the party who erred the power of withdrawing from the contract, provided, as Génicot, vol. 1, no. 589, III, suitably adds, that he preserve the other party harmless.

¹ But if it has introduced inequality, or was the cause why something was bought for an excessive price, the price must be suitably moderated.

Moreover, an error is called *substantial* which affects the essence of a contract: whether its *nature*—a donation for a sale; its *cause*—you promise the restitution of money as having been accepted by loan, although it was not given by loan; or an *object* which, by the determination of the parties, is essential. Hence a quality which is principally intended pertains to the essence understood in this manner. Thus, if you seek a house for country living, its location in the country will be essential. An *antecedent* error gives cause to the contract, that is, an error without which consent would not have been given.

We posit the error as invincible. From a vincible error, losses will have to be repaired according to the degree of fault.

2. CONCERNING FEAR. Omitting fear which so disturbs the mind that it takes away essential deliberation, and fear from an intrinsic cause or from an extrinsic but just cause, by which a contract is not vitiated, all first oblige the author of unjust fear to repair the losses. Then, if a contract is made directly from extrinsic and unjust fear, some permit him who has suffered the fear to rescind the contract, provided that the fear was comparatively grave—with respect to the frightened person—or, if light, nevertheless gave cause to the contract and a gratuitous contract is in question, or one which, like betrothal, demands greater freedom.² Others deny that the contract is rendered infirm unless the other contracting party himself was to be blamed for the offense, at least as an unjust cooperator. Then they make the contract rescindable at the will of him who was affected by fear; indeed, some at least make it null, provided the fear was at least comparatively grave.

² These solutions are sought from equity. Cf. below, no. 312, 2, b.

Fear which was neither a sufficient nor a necessary cause of the contract does not vitiate it, but obliges to repair the losses. Finally, if a contract is made indirectly from fear, the contract is not rescindable unless the other party was blameworthy.

Moreover, a contract is made *from fear* if there would have been no agreement without the fear; it is made *directly from fear* if the fear was inflicted to extort consent; it is made *indirectly from fear* if force was inflicted for another end, so that the contract is just in itself.

309. The argument and opinions. We by no means intend to attack these solutions, but we inquire into their true and intimate explanation. Concerning the argument of the thesis, theologians think as follows:

1. Most defend the rules *concerning error*, relying upon this principle: that *per se* only substantial error, or an error by which a condition without which not is lacking, renders an agreement invalid.³ Some, however, whom we support, attribute to an error giving cause the power *per se* of rendering the act infirm. Thus Conradus, *On Contracts*, q. 57; Medina, *On Restitution*, q. 33.

³ Molina, tract 2, disp. 209, no. 25; Lessius, chap. 17, nos. 33, 34; C. de Lugo, disp. 22, no. 68 ff., especially no. 92; St. Alphonsus, bk. 3 (4), no. 715; Ballerini-Palmieri, *Moral Work*, vol. 3, pt. 3, no. 81 ff.

2. As regards fear, there are those who think that a contract becomes null through every grave fear unjustly inflicted by the contracting party.⁴ Others hold the same only concerning gratuitous contracts,⁵ while our position, to be explained immediately, is called the more probable and most common by St. Alphonsus, bk. 3 (4), no. 716. Lessius, chap. 17, dub. 6, and C. de Lugo, disp. 22, no. 115, agree with us.

⁴ Molina, disp. 326, no. 14; Rebellus, *On the Obligations of Justice, etc.*, pt. 2, bk. 1, q. 5, no. 15; Ballerini-Palmieri, *Moral Work*, vol. 3, pt. 3, nos. 100-102.

⁵ Soto and others cited by C. de Lugo, disp. 22, no. 114.

We give what we think briefly in this manner: Through error, whose rationale we separate completely from fear, we pronounce that a contract becomes null from its first beginning as soon as consent must be derived from error; but we explain the practical efficacy which a contract infected by a non-substantial error, although giving cause, often obtains through a ratification which tacitly supplied the defect at the same time and is not rarely commanded by the law of nature.

Fear, on the contrary, as we opine, renders no contract infirm of itself. Yet he who contracted from fear will be able to rescind the contract if either an injury must be repaired by the other contracting party, or natural equity—cf. no. 312, 2, b—counsels that this faculty belongs to the one who suffered fear. Yet we defend these things only as more probable to us.

§ 2. Conclusion and Supplements to the Doctrine

THESIS XXII

Per se, every error truly giving cause to a contract invalidates the contract, but no fear, even grave fear, does so. In practice, however, a contract infected by a non-substantial error will often bind simply, on account of a tacit ratification or one imposed by nature itself; while an injury to be repaired or natural equity not rarely gives to one who has suffered fear the power of rescinding a stipulation made from fear.

310. I. State of the Question. 1. INTENTION OF THE THESIS. This appears from what has been said to be that we define the true force of error and fear upon agreements, and thus at the same time attain the just measure and the deeper rationale of the solutions which are commonly reported. What we will, moreover, has just been handed down. Hence:

2. THE TERMS ARE EXPLAINED.

Per se invalidates the contract: that is, by the law of nature and considered in its first, as it were, beginning, the contract as such does not produce juridical effects.

Every error truly giving cause: that is, removing that knowledge which would have prevented consent.

Every: both concerning the substance and concerning a quality, whether the mind of the one erring was positively conditioned or not.

But no fear: even if it was inflicted unjustly and directly to extort consent.

Even grave fear. By these words we indicate not only that the case of light fear is easier, but also intimate that we do not consider fear by which the mind is so disturbed that it takes away a human act. For concerning this the question is readily resolved.

It is also apparent that we posit consent which is truly internal, so that we exclude the case of fiction which Ballerini-Palmieri constructs in the work cited, no. 100.

In practice, however, a contract will often bind simply. This they commonly admit. Therefore, we give our own—and, unless we are mistaken, more adequate—explanation; yet we do not reject the practical response of others.

Infected by a non-substantial error. For substantial error, at least invincible error, leaves the transaction unperfected, as all confess. But if it was vincible, losses can have to be repaired according to the degree of fault.

On account of a tacit will signified by the contract itself. For he who expressly consents, for example, to a sale, at the same time tacitly says that he renounces the benefit of errors which, from common sense and according to the varying nature of contracts, cannot be taken into account. He is regarded as bearing this habitual disposition of mind. And from that tacit and simultaneous confirmation we

derive the efficacy of the consent which we judge to be inefficacious *per se*; while, for our adversaries, the consent itself is efficacious *per se*, unless, on account of a conditioned mind, it is subjected to a tacit revocation.

Or a ratification imposed by nature itself. For the natural law itself, since it prevents contracts from being too unstable, imposes this ratification. But if the will of the party positively resists, it will be blameworthy for an injury to be repaired.

While an injury to be repaired or natural equity not rarely gives to one who has suffered fear the power of rescinding a stipulation made from fear. Cf. no. 308, 2. By stipulation we understand the contract itself.

II. Proof.

311. A. OF THE FIRST PART. Concerning the efficacy which belongs *per se* to error or fear.

In order that nothing essential be lacking in a contract on the part of consent, it is required and sufficient that consent, which is truly a human act, find its adequate cause.

But. Every error giving cause *per se* takes away this requisite, but no fear, even grave fear, does so *per se*. **Therefore.**

The major is evident, because a contract is a voluntary commutation.

The minor is proved. Insofar as consent labors under ignorance, the act is non-human; but insofar as it would not have been given without that ignorance, it formally enters the contract *in fieri* [in its coming-to-be] by this very non-human part of itself and would exercise necessary efficiency upon the effect of the obligation, if the latter were present. Hence St. Thomas, I-II, q. 6, art. 8, pronounces universally that antecedent ignorance—which is present “when it is not voluntary and nevertheless is the cause of willing what one otherwise would not will ... causes the simply involuntary.” Hence also the sayings: “Those who err do not seem to consent. There is no consent of one who errs. The will of one who errs is null.”

On the contrary, consent given from fear remains wholly human. Deliberately, with this or that evil impending, this means of escape is chosen.

Therefore, things done from fear which does not disturb reason are universally pronounced voluntary simply, although for the most part they are at the same time involuntary in a qualified respect. Cf. St. Thomas, I-II, q. 6, art. 6.

It is confirmed, as regards the effect of error:

a) From the fact that the practical rules of Lessius and St. Alphonsus—above, no. 308, 1—can scarcely be explained in the other opinion. For how, if an error giving cause to a contract does not vitiate the contract, is withdrawal from the contract permitted to a person who was deceived by no one except himself, so that, especially while the thing remains intact, he does not consider himself bound? How is this called the tacit mind of the contracting parties by St. Alphonsus, no. 715?

b) From the fact that Ballerini-Palmieri himself, no. 91, perceives and explains exceedingly well the difficulty of the matter, namely, that no greater obligation can be imposed upon someone through a contract than that which he himself willed to assume, nor can it be that he willed what he did not

know. Hence the contract retains force merely to avoid disturbances in human intercourse. But this inconvenience is avoided equally well by our opinion.

It is confirmed, as regards fear, from the fact that fear which is not unjust, or which is from an intrinsic cause, as all confess, does not render the contract infirm; nevertheless, it touches consent in no other manner than unjustly inflicted fear does. But an injury which has been done, although it indeed produces its own effects, nevertheless does not intrinsically change the contract itself, as Ballerini-Palmieri, no. 90, appears to contend.

312. B. OF THE OTHER PART. Concerning the practical corollaries.

1. In practice, however, a contract infected by a non-substantial error will often bind simply, on account of a tacit ratification or one imposed by nature itself.

Contracts, although vitiated by some error, obtain of themselves that firmness which is commonly required for intercourse among men. For the parties are regarded as mutually furnishing to one another this security against fortuitous errors and deceptions; and the natural law itself, so that it may sufficiently provide for the common good, imposes this firmness. But no greater firmness would be proved by any argument.

But. A tacit ratification by which the parties, within the limits of the common requirement, renounce the benefit of error plainly renders the contract firm to the extent required for the common good.

Therefore. This ratification is to be admitted or is imposed by nature itself; and therefore, on account of it, it will not rarely happen that a contract infected by a non-substantial error binds simply. *By a non-substantial error*, I say: for there is not the same rationale for substantial error, which more fully removes all efficiency of the will and is more easily avoided.

Our adversaries, however, while they attribute to vitiated consent itself a general efficacy of commuting rights, introduce in vain into contracts a certain effect *beyond consent*. In vain: for there is no necessity; nor then will they be able to explain the faculty of withdrawing which was conceded above, no. 308, on the authority of Lessius and St. Alphonsus.

2. An injury to be repaired or natural equity not rarely gives to one who has suffered fear the power of rescinding a stipulation made from fear.

Nature itself wills that an injury be adequately repaired unless a prevailing common detriment stands in the way; and nature itself sanctions natural equity. For this sanction pertains to the suitable governance of private property.

But. The faculty of rescinding granted to him who has suffered fear:

a) Is required for the perfect reparation of an injury, as soon as the other contracting party is in some manner guilty of the force inflicted. This is evident. For unless he permits the outcome of the contract to the will of him upon whom he inflicted fear, he will truly reap the fruit of his injury.

b) Is often demanded by natural equity, even if the other party was not blameworthy. For it would be *per se* contrary to natural equity for someone through consent extorted by fear to relinquish his thing or his right in an immutable manner; and this would be the more inequitable, the more the contract by its nature demands a spontaneous will, or the less detriment to the other party is to be feared from rescission. For all hold that it belongs even *per se* to the rationale of ownership, which bears

upon this, that it grant the free use of a thing, that agreements be made from sufficiently spontaneous consent; and that this is especially necessary in those whose cause is the intention of doing good, or by which personal freedom itself is in some manner alienated. Hence, on the one hand, the common good of itself demands that true consent be efficacious; yet, on the other hand, equity wills, especially in donations and marriage, that this consent be spontaneous. A fitting manner of reconciling these things will be that contracts made from unjust fear are indeed valid, but are not firm without new consent, unless either the very nature of the contract, which cannot be rescinded, or a prevailing detriment to the other party stands in the way—as would happen if, in an onerous contract, light fear inflicted by a third party could be opposed against the party who had no share in the injury.¹

¹ Thus we defend the cases handed down in no. 308, 2. Yet this faculty of rescinding, on account of equity, is not approved by all.

Therefore. This faculty is granted by nature insofar as it can be granted without detriment to a greater common good.

But the greater sanction of nullity **a)** is not required *per se*, since nothing harms the injured party except an obligation firmly assumed; **b)** indirectly favors him less, since it dissolves the bond of the other contracting party. But the objection drawn from contracts which, like marriage, cannot be rescinded will be resolved below, among the replies to the difficulties.

313. III. Difficulties.

1. NOT EVERY ERROR GIVING CAUSE RENDERS A CONTRACT INFIRM *PER SE*. For:

a) An error of this kind is often not substantial but accidental. **But.** What is not substantial does not take away the essence of a thing. **Therefore.**

Reply. I distinguish the major. It is not substantial in relation to the object, insofar as it does not regard its substance, **I concede**; in relation to the voluntary, **I deny. I contradistinguish the minor:** what is in no respect substantial does not take away the essence of a thing, **I concede**; what is substantial in some respect, **I deny**; or *I subdistinguish*: it does not take away the essence of the thing under this respect, **I concede**; under another respect and simply, since the essence itself perishes when one note is lacking, **I deny**.

Through every error giving cause, it comes about that the contract is no longer wholly from the will as from an adequate proximate cause; this corrupts the voluntariness required for a contract. Hence, strictly speaking, there is not even consent to the substance of the thing as it exists, but rather to the abstract rationale of the substance.

b) If anything involuntary took away a contract, because of the frequency of the occurrence, there would be an incredible disturbance in human intercourse. Ballerini-Palmieri, *On Contracts in General*, no. 91.

Reply. Unless it recovered its firmness from a necessary ratification, **I concede**; with the law of ratification posited, **I deny**.

c) The will of one who errs concerning a quality is not to be explained by these words: “I contract if the thing has this quality,” but by these other words: “I contract, although I would not contract if I

knew that the thing lacked that quality.” **But.** Since he is in fact ignorant, that condition effects nothing and does not impede the actual and absolute consent which is present in fact. **Therefore.**

Reply. I deny the major, because at least its latter part is false.

For the intention is to be declared thus: “I contract, not intending to contract unless, as I judge, such a quality is inherent in the thing.” But the objector so explains consent that, contrary to the hypothesis, he suppresses every error. In place of error he posits consciousness or a positive suspicion of true ignorance! But the rationale of infirmity is not so much the defect of an appended condition as the defect of voluntariness from an error giving cause.

2. A CONTRACT MADE FROM UNJUST FEAR IS OF ITSELF INVALID. For:

a) That fear takes away the cause of the contract.

For either a gratuitous contract is in question: he who promises from fear does not have an intention of liberality (Ballerini-Palmieri, no. 102); or an onerous or bilateral contract is in question: he does not intend to exchange the other's burden or obligation for his own, but merely exchanges his own obligation for redemption from unjust harassment. But this is a false cause, since it regards an object which is not capable of valuation by price, as being already owed from commutative justice.

Reply. I deny the assertion and its proof.

For he who truly consents to a contract wills the intrinsic end of the obligation which pertains to this contract. Therefore, he wills to give gratuitously, although that intention does not proceed from a mind benevolent of its own accord. Yet how often does it happen that gifts are made with little willingness, but sincerely, because custom compels or the hope of some utility advises it! Similarly, he truly wills to exchange his own obligation for the burden or obligation of the other. The difficulty confuses a cause properly so called with an impelling motive or a more remote end. Cf. C. de Lugo, disp. 22, no. 120.

Instance. He who, in order to cover his head, puts his arm in the way of a stick, and his arm is therefore injured, is not regarded as having consented to that wound. **But.** The matter stands in the same way here. **Therefore.** Ballerini-Palmieri, work cited, no. 102.

Reply. I distinguish the major. He is not regarded as having consented to the injury of his arm, **I concede**; to the extension of his arm, although done from fear as a means of protecting himself, **I deny. I distinguish the minor.** The matter stands in the same way here insofar as the contract is the wound itself, **I deny**; the extension of the arm, **I concede** or **I pass over**.

The wound will rather be the injury or loss, if any, which follows from the contract itself.

b) To affirm a right of withdrawing at will is to deny the obligation. But to deny the obligation is to deny the force of the contract, since the proper and necessary effect of an agreement is an obligation. **Therefore.** Since rescission at his own discretion is permitted to him who suffered unjust fear, the nullity of the contract on his side is conceded. Ballerini-Palmieri, no. 89.

Reply. I distinguish the major. To affirm a right of withdrawing is to deny the obligation as regards its first arising or existence, **I deny**; as regards its firm existence, *I subdistinguish*: on account of a cause intrinsic or extrinsic to the contract, **I concede**; on account of a cause necessarily intrinsic to it, **I deny. I contradistinguish the minor.** To deny the obligation as regards its first existence, or as

regards its firm existence on account of a cause intrinsic to the contract, is to deny the validity of the contract, **I concede** or **I pass over**; on account of an extrinsic cause, **I deny**. **I deny the consequence.**

Rescission is permitted on account of the fear inflicted; this injurious deed precedes the contract, is its moral cause, and therefore is extrinsic to it. Just as, if a prior agreement concerning some thing to be performed has been made, its execution is remitted to the discretion of the debtor by another agreement, you would not call the prior agreement null, whose effect is only removed from without; so, in the present case, we have two juridical deeds: a certain injury and a contract. The former produces in him who inflicted the fear the obligation of repairing the loss, if the injured person wills. The latter imposes upon the injured person an obligation whose rescission is the adequate reparation of the loss. As if creditor and debtor of the same thing, he can extinguish that obligation by compensation.

c) The faculty of withdrawing does not sufficiently protect the person who suffered fear, since it leaves indissoluble contracts, such as marriage, without a remedy.

Reply. I deny the antecedent; and, to the rationale, I distinguish. Without any remedy, **I deny**; without the remedy of rescission, *I subdistinguish: per se, I deny; per accidens*, on account of the prevailing utility of the common good, **I concede.**

For this remedy is available: that he who suffered fear feign consent. Positive law can also attach a fuller effect of invalidation to this defect of consent, as the Church has done for marriage and religious profession. But if the contracting party omitted to use the faculty of feigning and positive law was silent, *per accidens*, on account of the public cause which forbids certain contracts to be rescinded, a certain adequate reparation of the injury will be lacking. Yet it is sufficient that sufficient remedies for repairing injuries be present *per se* in the natural law, although not rarely a superior rationale opposes their use. Thus, for example, adequate reparation through marriage for a violated body is inaccessible to a married deceiver.

IV. COROLLARIES.

314. How the opinions differ in reality. The formal difference between the explanation of the efficacy of error which is handed down by most and our own is this: they derive the infirmity of the contract from a positive will—of positing a condition without which not—which is superadded to the error; while we attribute the firmness of the contract to another positive will—of holding the agreement ratified—and permit error its connatural effect. According to them, the contract is valid from erroneous consent; according to us, from another consent which is sufficiently manifested in these circumstances through a general disposition of the will and which is in no respect erroneous. Cf. nos. 309 and 312.

315. A gratuitous stipulation made from fear. Since a unilateral gratuitous contract produces this sole effect of obliging the promisor, and in practice a bond dissoluble at will is no bond, gratuitous contracts can be said to be rendered infirm by fear itself as regards practical efficacy.

Article III. The Notification of Consent and the First Beginning of the Obligation

Lessius, *On Justice and Right*, chap. 18, dub. 6; C. de Lugo, *On Justice and Right*, vol. 2, disp. 22, nos. 26-35; Carrière, *On Contracts*, no. 34; C. d'Annibale, vol. 1, no. 224; Lehmkuhl, vol. 1, nos. 1061, 1062; Ballerini-Palmieri, *Moral Work*, vol. 3, pt. 3, nos. 47-51; Crolley, *Theological Disputations on Justice and Right*, vol. 2, disp. 3, § 4, point 3.

THESIS XXIII

It is essential to a contract that consent itself, insofar as it is the offerer's, but, more probably, not insofar as it is the acceptor's, be notified by the one to the other.

Therefore, *per se*, an absolute obligation from a contract takes its beginning, in a unilateral agreement, from the external acceptance of the other party, but, in a bilateral agreement, from the notified consent of the counter-promisor.

316. I. State of the Question. 1. IN THIS THESIS WE TREAT the required notification of consent, from which it will at the same time be possible to define the time of useful revocation. That question concerning the first origin of the obligation is plainly of no practical importance except when an agreement is celebrated between absent parties.

2. OPINIONS. All require notification by the first offerer.

Not a few jurists¹ require notification of the acceptance also.

¹ Cf. Carrière, *On Contracts*, no. 34; Baudry, *Précis de droit civil [Summary of Civil Law]*, vol. 2, no. 797 bis.

Most, distinguishing unilateral contracts from bilateral contracts, require mutual notification in the latter alone, and thus concede to our opinion. So C. de Lugo, disp. 22, nos. 27, 29; Ballerini-Palmieri, no. 48. Yet they do not affirm in words so conceived the conditioned obligation of the first offerer, which, as we shall presently declare, we think arises earlier *per se*.

Finally, others, such as Carrière, no. 34 at the end, and Rev. Fr. Lehmkuhl, vol. 1, no. 1061, think that reciprocal notification is not required *per se* even in a bilateral contract, but that even a bilateral agreement is completed *per se* by the externally accepted offer of the first party.

3. THE TERMS ARE EXPLAINED.

It is essential to a contract: so that, even by a spontaneous renunciation of the parties, a contract cannot formally subsist when this has been omitted.

That consent itself, insofar as it is the offerer's, but, more probably, not insofar as it is the acceptor's. Therefore, in order that there be consent efficacious of an obligation, it is necessary, in our opinion, that consent be notified insofar as it is an *offer*; but it is by no means necessary, as we judge more probable, insofar as it is an *acceptance*.

Be notified by the one to the other. Notification is like promulgation in a law. It is, therefore, the declaration of the mind, or the notification of a resolution, through the mediate or immediate—but nevertheless formal—speech of one contracting party with the other.

Therefore, per se. For the parties can, by express or tacit will, reserve for themselves a greater faculty, or defer the first moment of the obligation to a longer interval.

An absolute obligation from a contract. For a conditioned obligation, by which the first offerer can no longer withdraw at his own discretion, but depends upon the discretion of the other, to whom the option of binding himself or not is given, can exist and does exist *per se* in a bilateral contract from the moment when the other has externally accepted the first promise.

Takes its beginning, in a unilateral agreement, from the external acceptance of the other party. By *external* we mean an acceptance which *per se* can be established among men. Cf. above, nos. 300 and 301, 3, b.

But, in a bilateral agreement, from the notified consent of the counter-promisor. Here, therefore, we require a twofold notification, before which an absolute obligation or perfect bilateral contract cannot be present.

II. Proof.

317. A. OF THE FIRST PART. Concerning the necessity of notification.

1. CONSENT MUST BE NOTIFIED INsofar AS IT IS THE OFFERER'S.

The right which the offerer cedes must be placed by the offerer himself in that state in which it can be acquired by the other party.

But. By notification alone it is placed in that state.

Therefore. Consent, insofar as it is the offerer's, must be notified by the one to the other.

To the major. That which places it in that state exercises a true causality, even if perhaps instrumental, upon the very loss of the right, just as the external speech of God itself pertains to the motive of faith. But that whole causality must be attributed to the will of the offerer. Otherwise, the cession would not be wholly voluntary.

To the minor. For a right cannot be acquired dependently upon another's cession unless the will of the one ceding has been communicated to the other; this is done among men through speech alone. But to state a will of this kind is, in the strictest sense, to notify it.

2. IT NEED NOT BE NOTIFIED INsofar AS IT IS THE ACCEPTOR'S.

First Argument. The consent of the acceptor is required only such that a right can be acquired among men.

But. For that effect, a formal notification made to someone is not required *per se*. **Therefore.**

The minor is proved. Through the occupation of a thing belonging to no one, its ownership is acquired without any formal declaration.

Confirmation. For this is the effect of a notified offer: that the other have the same faculty of acquiring another's thing which anyone has of acquiring a thing belonging to no one. For this, an external sign of consent suffices.

Second Argument. A cause cannot be posterior to its effect.

But. After the external acceptance of the other, there is already of itself the consent of two or more persons to the same agreement, which is the definition of a contract.

Therefore. The notification of consent, insofar as it signifies acceptance, is of itself posterior to the contract and therefore cannot of itself be required as a cause.

Third Argument. If notification of acceptance as such were required of itself, a process to infinity could scarcely be avoided. For, by parity of reasoning, a new notification would be necessary by which it would be signified that the prior notification had been received before consent was revoked, and so on. Carrière explains this more broadly in *On Contracts*, no. 34, where he treats the third opinion.

318. B. OF THE OTHER PART. Concerning the first origin of the absolute obligation.

From a perfect contract, since an obligation is its necessary effect, an absolute obligation arises.

But. *Per se*, a unilateral contract is perfected by the external acceptance of the other party, but a bilateral contract by the notified consent of the counter-promisor. **Therefore.**

To the minor. **1. Concerning a unilateral contract.** It is not perfected before, since the external consent of each party has been proved essential. It is not perfected later *per se*, because in a unilateral contract the other party merely accepts and does not counter-promise, while acceptance does not have to be notified *per se*.

2. Concerning a bilateral contract. In a bilateral contract, unlike in a unilateral contract, the acceptor or promisee also in his turn offers or promises something. For example, in a sale one offers the house, the other the price; in marriage, by words which express present consent, each hands over the body and accepts the handing-over made by the other. Therefore, the consent of the counter-promisor contains an obligation.

But. An offer must be notified.

Therefore. Before this consent is notified by the counter-promisor, that contract is not perfected.

Yet the first offerer, by the same speech by which he notified his offer, could already accept the future offer of the counter-promisor, and thus already be bound conditionally: “if the other should counter-promise some such thing.” This happens through the notified consent of the latter. **Therefore.** *Per se*, once that notification has been made, nothing is now lacking for the perfection of the contract.

This last point can also be shown thus. In some cases all confess that the first offerer can no longer withdraw, although he has not yet received notice of the consent of the other—for example, if he has sent the price itself together with letters proposing the purchase of a horse.² Therefore, once the essence of a contract strictly so called has been perceived, by the same speech by which he offers a thing—for example, for purchase—the offerer can efficaciously accept the other's counter-promise if any should be forthcoming. For the essence of things is changed in no case.

² Cf. Ballerini-Palmieri, work cited, no. 50.

319. III. Difficulties.

1. IT IS NOT REQUIRED THAT THE CONSENT OF THE OFFERER BE NOTIFIED.

That notification would be necessary for this reason: so that the promise could be accepted by the other. But this rationale is null, for someone can accept a future promise in advance. **Therefore.**

Reply. I concede the major. I distinguish the minor. That acceptance will produce its effect from the promise, now future, once it has been notified, **I concede**; from the promise once it has been made, **I deny**.

For nothing can be acquired by acceptance except what in fact can no longer be retained by the promisor. Otherwise, acceptance would despoil the promisor of some faculty or right of his. For the offerer has the right of retaining the thing until he has formally handed it over through notification. You will say that the promisor can cede this right of his. We do not deny this, provided that he has notified this will of his to cede. But in this way there is already in advance a certain general notification of a future offer. Concerning this difficulty, cf. C. de Lugo, disp. 23, no. 67.

Otherwise you would also arrive at this absurdity: that someone who had once manifested that he would accept everything which others wished to give him would thereby bind any promisors, so that before notice was communicated he himself would acquire an absolute right. Cf. C. de Lugo, disp. 23, no. 67.

2. NOTIFICATION OF ACCEPTANCE IS REQUIRED.

a) For just as I must manifest to you my will of obliging myself, so you must manifest to me your will by which you will me to be bound to you. (Thus, approximately, in C. de Lugo, disp. 22, no. 27.) Nor is there a difference between a promise and an acceptance.

Reply. I deny it. For acceptance, formally taken, has the rationale of the acquisition of a right; but for acquiring a right, it suffices that the faculty has been given to me and that I apprehend the object in a human manner, just as no notification is required for acquiring, by occupation, a thing belonging to no one. Cf. C. de Lugo, disp. 22, no. 29.

N.B. Therefore, the rationale why we demand, in bilateral contracts, notification of the consent of each party is not that “just as a mutual cession of right, so mutual acceptance is required” (Rev. Fr. Lehmkuhl, vol. 1, no. 1061), but that, before notification, there is no mutual cession of right as regards the right which the other party transfers.

b) In bilateral contracts, acceptance cannot be distinguished from the will of obliging oneself. **Therefore.** Notification of consent is required insofar as it signifies acceptance. Thus, approximately, C. de Lugo, disp. 22, no. 29.

Reply. I distinguish the antecedent. It cannot be distinguished materially, **I concede**; formally, **I deny. I distinguish the consequence likewise.**

3. EACH RULE CONCERNING THE FIRST ORIGIN OF THE OBLIGATION IS FALSE.

Either external acceptance suffices, and then, even before the consent of the counter-promisor is notified, an absolute obligation of the bilateral agreement already arises; or notification of acceptance is required, and then a unilateral contract is not perfected by acceptance. **Therefore.** One or the other assertion is false.

Reply. I concede the disjunction and its former member, but I deny the former consequence, because the consent of the counter-promisor contains an offer, and as such must be notified.

Instance. But. It need not be notified as such.

For “the first party, who offers something to another who is absent under the condition of a reciprocal offer of the price or of another thing, can immediately accept hypothetically this offer of the other contracting party which he awaits. If he does this, then, when the other consents to the

proposed conditions, both the offer and the acceptance of each party are present, and these are not merely hypothetical but absolute” (Lehmkuhl, vol. 1, no. 1061).

Therefore. Before any new notification, there is a perfect contract.

Reply. I distinguish the major. The first party who offers something to another who is absent can accept the other's offer hypothetically, that is, under the condition that the other's consent be given and notified, **I concede**; that it merely be given, *I subdistinguish*: he can will this in such a way that the other is bound before notifying his consent, **I deny**; in such a way that he himself can no longer withdraw from the consent externally given, **I concede. I contradistinguish the minor.** With the consent notified, this offer and acceptance become absolute, **I concede**; before notification, *I subdistinguish*: they become absolute, that is, released from the discretion of the first offerer, who is bound, **I concede**; simply, **I deny. I deny the consequence.** Cf. the reply to the first difficulty.

That a right has not been acquired by the first offerer before notice of the acceptance has been received can also be shown thus. No one denies that the acceptor can reserve for himself the faculty of withdrawing until notice of his acceptance arrives. But lest this faculty become nugatory, must not the first offerer await notification of the will before disposing of the right which he wished to acquire for himself from the other? **Therefore.** *Per se*, he is prohibited from disposing of the right before this notification, and therefore the right has not been acquired by him.

IV. COROLLARIES AND SCHOLIA.

320. Notification made to an agent suffices. Because an agent represents the person of the principal, notification made to the agent suffices for the contract to be perfected.

C. de Lugo, disp. 22, nos. 33, 34, attempts to explain the case proposed at the end of no. 318, 2, on the ground that the first offerer then makes the other party his mandatary, who notifies to him as principal the consent which he gave as a contracting party. Who does not see that this is devised too subtly and is contrary to the common understanding of the matter?

In the same case, the counter-promisor will also be able efficaciously to revoke his consent until it has been notified.

321. A promise in favor of a third party. He who promises Titius that he will do something in favor of Caius is not bound toward Caius by an obligation of justice before Caius has duly learned of it and accepted it. But he will be bound toward Titius, provided that the latter has an interest—whether by reason of the thing or by reason of a connected person—that the promised performance be executed. And by the law of nature he will not be able, against the will of Titius, to revoke his promise and take the option away from Caius. Cf. Carrière, no. 230.

322. Concerning the obligation of the first offerer. Most often, in a bilateral contract, neither party wills to be bound before the other, so that their condition may be equal. Hence that conditioned obligation of the first offerer is not regarded as present unless a will of this kind has been manifested sufficiently openly.

323. Concerning the positive law of France, it is established that a donation is not perfected before the donee has notified his consent to the donor (art. 932). As regards other acts, jurists divide into three opinions. But those who hold that a contract is perfected by acceptance understand such an acceptance that it is no longer within the power of the acceptor to retract the signs of the

acceptance made. They therefore will consent to be so manifested that it can in no way be equated with a resolution retained in the mind. Thus written letters can be destroyed; but when they have been entrusted to the public office by which they are sent—a *lettre jetée à la poste* [letter put in the post]—they already constitute a certain document of consent. Cf. Baudry, vol. 2, no. 797 *bis*; Laurent, vol. 15, no. 479; Aubry and Rau, vol. 4, § 343, note 3; Thiry, II, p. 555 ff. According to the new German code, art. 151, contracts are perfected by the acceptance of the offer alone, unless, according to received custom, notification of the acceptance must be awaited. The various provisions concerning the conditioned obligation of the offerer are also worthy of consideration. They come down approximately to this: that the offerer is bound *per se* by his offer, provided that the other party replies immediately—by word, if the matter is transacted face to face; otherwise, by letter. Cf. arts. 130, 145-150.

Chapter III: Laws that Render Juridical Acts Invalid

Molina, *On Justice and Right*, tract 2, disp. 81; Suárez, *On Laws*, bk. 5, from chap. 19; C. de Lugo, *On Justice and Right*, vol. 2, disp. 22, sect. 9 (nos. 249-279); Carrière, *On Contracts*, nos. 105-154, especially from no. 147; C. d'Annibale, *Summary of Moral Theology*, vol. 1, nos. 209-216; Lehmkuhl, *Das bürgerliche Gesetzbuch des deutschen Reiches* [*The Civil Code of the German Empire*], title 2 (*Stellung der Frage* [*Statement of the Question*]); Waffelaert, *On Justice*, vol. 1, nos. 343-354; Van Gestel, *On Justice and Civil Law*, no. 64 ff.; Ballerini-Palmieri, *Moral Work*, vol. 3, pt. 3, nos. 24-44.

Article I. Preliminary Notions

324. Concerning an invalidating law and a prohibiting law. 1. An *invalidating* or *infirming* law is a law which wholly or partly takes away the natural efficacy of a juridical act. Strictly speaking, therefore, it regards an act to which nothing is lacking of itself for commuting rights, and impedes its power.

A merely *prohibiting* law, on the contrary, does not touch the juridical effect of the act, but renders the agents guilty: thus, for example, laws by which merely prohibiting impediments to marriage are established.

An invalidating law is not necessarily prohibiting: he who, in making a donation or a testament, omits solemnities necessary by law violates no prohibition.

The sanction of invalidation was formerly called *perfect*; the sanction of punishment alone, *less than perfect*; and that of invalidation and punishment, *more than perfect*.

2. Three modes of invalidating can be distinguished. For a law can render an act invalid: **a)** after the sentence of a judge, not by full right; **b)** by full right, but civilly only; **c)** by full right, even naturally.

The scope of these three modes will be more apparent from the five rationales of disapproving a juridical act which Laymann ascribes to positive law:

a) A law merely does not assist an act, or does not grant an action in the external forum: articles 1965-1967 of the French Code deny this to debts from gaming.

β) It merely prohibits an act, but takes away no juridical effect. In this manner marriages between a heretical and a Catholic party are disapproved.

γ) It renders the act rescindable by the sentence of a judge. Thus, in favor of wards, and so forth, articles 1124, 1125 of the French Code establish; thus also article 1117 rendered contracts from fear rescindable.

δ) It renders an act civilly null, holding it as unperformed, so that after the sentence of a judge—which should rather be called a declaration and is not always required—it is rendered infirm as if nothing had been done from the beginning. Examples under French civil law are, for example, a marriage celebrated only before a minister of the Church.

ε) Or it even takes away, before every sentence or declaration, the natural obligation, or the obligation of the forum of conscience. Thus, under canon law, a marriage contrary to the Tridentine form where the decree *Tametsi* is in force.

325. Concerning nullity and natural obligation. 1. From what has been said it follows that the words *a null act*, which of themselves are clear and definite, on account of varying usage and impropriety of speech,¹ are not free from ambiguity, so that they signify almost equally acts which are infirm in some manner. Yet the word *rescindable* of itself designates abolition by the sentence of a magistrate. Cf. above, no. 288.

¹ This, for example, is rightly objected to the French Code, so that certain acts are called null in the law which are merely rescindable, even civilly. Hence no small difficulty in explaining the law itself. Cf. arts. 887, 892, 1110, 1111, 1113, 1117, 1304, 1338 (Baudry, work cited, vol. 2, no. 1152).

To remove this obscurity, some jurists introduced a distinction between a nonexistent act and a null act, which they equate with a rescindable act. Rev. Fr. Van Gestel, work cited, no. 73, rightly and deservedly rejects this manner of speaking, since by it violence is done to the genuine meaning of the words, by which *null* means the same as *nonexistent*; but an act merely subject to rescission is not meanwhile null. Nevertheless, the distinction pleases some theologians.

But so that every confusion might be more fully avoided, the Most Illustrious Bishop Waffelaert, vol. 1, no. 351, distinguished: a rescindable act; a null act, which even civilly bears a certain appearance of a valid act, so that it gives occasion to a controversy which must be decided by the sentence of a judge; and an act nonexistent by positive law, which does not exist even in appearance in the civil forum. The latter he judges plainly invalid also in the forum of conscience, while, in our opinion, it can happen under our law that the whole matter is circumscribed to the external forum.

2. The words *natural obligation* are also received in a twofold manner. For sometimes they designate an obligation arisen from an agreement naturally valid, to which the civil law indeed does not attach an action, yet does not deny all civil effects, since it holds the voluntary payment itself ratified (arts. 1235, 1967, French Code); while sometimes they designate a moral obligation, or an obligation of the internal forum, which the law in no manner attends to, although it does not positively abolish it. Concerning these things, cf. Aubry and Rau, *Droit civil français* [French Civil Law], vol. 4, § 297, especially notes 2, 3, 5.

Article II. Conclusion and Supplements to the Doctrine

THESIS XXIV

Even over contracts, and generally over juridical acts, which have force by natural law, the authority of the civil power is *per se* so great that by just laws it is able to render them fully invalid, so that, before any sentence of a judge, they produce no obligation even in the internal forum.

Nevertheless, these laws are of strict interpretation.

Therefore, concerning present-day positive law, it must be answered that, as a rule, acts which are pronounced null are not deprived of their natural force before the sentence of a judge.

326. I. State of the Question. 1. THE FORCE AND INTENTION OF THE THESIS. By the present position we ask what the civil law can effect upon the essence or efficacy of a contract—or of a juridical act in general—and what it has in fact done today. Concerning the former point we posit two things: that civil law can *per se* take away from these acts every force which they would otherwise obtain in conscience; but that it does not exercise this force unless the will of the legislator is clearly established. As regards the other point, we affirm, as at least probable, that as a rule the conscience is not bound by the invalidations of present-day law before the sentence of a judge.

2. OPINIONS. The first position, if there are any who deny it—and they are few in number, as Carrière, *On Contracts*, no. 88, relates—every excellent theologian and jurist affirms, either tacitly or expressly, to be indubitable.

The second position also, although it is often not examined expressly, is proposed by Suárez as plainly certain and is easily derived from the principles for interpreting laws. Cf. Suárez, *On Laws*, bk. 5, chap. 32, no. 7.

Which acts, however, are thus rendered invalid by positive law always was, and remains, a difficult and disputed question. There was indeed less doubt and controversy concerning canon law, as Suárez, work cited, no. 6, declares; but there was plainly uncertainty concerning the force of Roman laws. Cf. the various opinions in Molina, tract 2, disp. 81; C. de Lugo, vol. 2, disp. 22, nos. 249-251, where, concerning contracts and testaments, he recounts four opinions which he judges probable.

Nor is the mind of the French Civil Code more established among present-day jurists. Thus Laurent wrote in *Principes de droit civil* [*Principles of Civil Law*], vol. 15, no. 458: “Uncertainty is in some manner traditional”; and Baudry, *Précis de droit civil* [*Summary of Civil Law*], vol. 2, no. 1146: “This matter is important and complicated; its natural difficulty is further increased by the disorder in which the legislative provisions are presented.” Cf. Van Gestel, no. 71.

It is no wonder, therefore, if the matter is not agreed upon even among theologians who have attended to more recent laws, and if different men will different acts or contracts to be absolutely null by the authority of civil law. This very doubt seemed to us a not infirm argument for the third position.

In the third position we accede to the opinion of the Rev. Fathers Lehmkuhl and Van Gestel; nor will the Most Illustrious Bishop Waffelaert contradict the general proposition, and still less the distinguished Marrès.

Nevertheless, since Carrière and several others posit this norm—"nullities which were introduced for the rationale of the common good obtain in the forum of conscience"—we have them as adversaries in this part, as we shall show in the corollary, no. 330.

3. THE TERMS ARE EXPLAINED.

Even over contracts, and generally over juridical acts. Juridical acts are human acts which tend toward the acquisition of a certain right or its renunciation. Cf. Van Gestel, no. 63.

Which have force by natural law. Hence the question is not:

a) Concerning acts which do not possess those things which the law of nature requires so that they can be valid. For it would be superfluous to dispute concerning a contract which, for example, lacks essential consent;

b) Concerning acts whose faculty exists only through positive law, nor concerning effects which proceed from positive law alone. For it is evident that, for example, the faculty of voting is not possessed except under the conditions established by human law. It is no less evident that an act for which the law of nature alone has given the faculty is not clothed with civil efficacy; but, if it has any efficacy, this is natural only. Thus, for example, possession which lacks something required by civil law will not avail for usucaption.

So great per se: we say this because it can happen that the matter is withdrawn from civil authority by a superior power. For example, the contract of marriage between Christians, on account of its sacramental character, is withdrawn from the civil power as regards the bond.

Is the authority of the civil power. You would say the same concerning the ecclesiastical power as regards the contracts which it governs.

By just laws. For the common conditions of a law are plainly required. Therefore, this power is not to be exercised at pleasure, but the rationale of the common good is to be considered.

Is able to render them fully invalid, so that, before any sentence of a judge, they produce no obligation even in the internal forum. By these words we at once affirm and describe the fullest abolition of an act.

Nevertheless, these laws are of strict interpretation. Therefore, they are not to be extended to cases not clearly comprehended; and, where the mind of the legislator is doubtful, the lesser abolition is rather to be admitted.

Therefore, concerning present-day positive law: we mean the civil law of many nations, especially England, Belgium, France, Germany, Holland, and Italy.

It must be answered that acts which are pronounced null: and null in such a way that they are held civilly as unperformed.

It is clear, moreover, that the controversy does not concern acts which positive law clearly declares rescindable, but those which it pronounces null: for example, a donation completed by a non-authentic act (arts. 931, 932, French Code), or a testament which has not been drawn up in the legitimate form (art. 1001). You should also carefully distinguish solemnities required as substantial from those demanded merely for the sake of proof. Thus, under our law, unless you have at hand a writing by which you can at least prove the matter semi-fully, you cannot prove by other means, in

the external forum, a contract whose object exceeds 150 francs in value. Yet by this law the validity of the agreement itself is not touched in the least. Cf. French Code, arts. 1341-1348, 1351.

As a rule: that is, unless the common good clearly demands that the effect of invalidation be most full, or unless the legislator must otherwise be charged with absurdity. Cf. Van Gestel, no. 76 and the twenty-sixth conclusion of the recapitulation.

Are not deprived of their natural force before the sentence of a judge. This sentence, where the matter gives occasion to some controversy, will be civilly declaratory of infirmity and at the same time will take away every natural obligation. But if it is too evident that nothing was civilly done, no other sentence can be conceived except one by which the judge commands the restitution of those things which were taken away or possessed without civil right.

II. Proof.

327. A. OF THE FIRST PART. Concerning the power of civil authority.

First Argument. The Council of Trent, by the decree *Tametsi*, rendered clandestine marriage—that is, a contract without a pastor and witnesses—fully invalid.

Therefore. Civil authority can render contracts fully invalid.

To the antecedent. For doubt can be raised neither concerning the mind of the Church, on account of the clear law and the unanimous consent of theologians, nor concerning the efficacy of the provision, since, on account of the prerogative of infallibility, whatever the Church does by universal law it shows by that very fact that it can do.

The consequence is proved. The Church could not do this because the rationale of a sacrament is inherent in marriage; for from that fact, rather, difficulties against this provision were sought in the Council of Trent itself. Rather, it could do so because the contract itself, legitimately celebrated, has been elevated to the dignity of a sacrament, and the Church can render the consent of the parties inefficacious for contracting. **But.** The Church has this authority not insofar as it is a spiritual power, but because, as the supreme power of a perfect society, it has the right and office of ordering, in the matter subject to it, the acts and rights of the citizens to the common good of that society. But this rationale can be transferred wholly, with the limits of this province observed, to the civil power.¹

Therefore. The inference from the Tridentine law to the efficacy of the power is rightly made.

¹ We suppose these limits to be observed throughout the present argumentation.

Second, direct argument. In order that the public power may order the rights and goods of the citizens to the common good, it has those same rights and goods indirectly subject to itself, insofar as their nature permits. Hence, by an efficacious sanction, it can decree concerning them what the common utility appears to demand.

But. 1. It is sometimes in the interest of the commonwealth that every obligation, even natural, by which citizens would otherwise be bound from juridical acts be taken away; and **2.** the nature of things is not repugnant to this abolition.

Therefore. The faculty of rendering acts fully infirm belongs to the public authority.

To the major. For just as the faculty of choosing means suited to their proper end belongs to citizens, so also to the state. And because the private good is subject to the common good, the latter, other

things being equal, ought to prevail. This rationale especially obtains where rights in external goods are in question. Cf. nos. 232, 2 and 234.

The minor is proved. **1. It is sometimes in the interest of the commonwealth.** For this abolition, when opportunely sanctioned, **a)** is a suitable punishment of certain crimes; **b)** prevents dispositions which of themselves are directly harmful to the common good; **c)** fosters particular justice and equity among the citizens. **But.** In the first two cases, the common good directly, and in the third it mediately demands that the public power be able to take away the natural obligation. **Therefore.**

2. The nature of things is not repugnant to this abolition. For, while rendering juridical acts infirm, the law touches rights insofar as they are acquired, lost, and transferred by the consent of the contracting parties or by the will of the disposing person; that is, insofar as they have by no means been withdrawn from the providence and care of men.

To the major. **a)** To use examples, is not the impediment of crime a most suitable punishment for adultery and the murder of a spouse, to the commission of which the hope and promise of marriage gave an inducement? **b)** Unless the faculty of rendering infirm were most full, the parties could by private agreements take away rights which, for the sake of the common good, either nature or law willed certain persons to possess. Thus the law, in view of the common good, establishes the management of the spouses' goods and the order of successions. By other private agreements, desires and undertakings very contrary to the common good would be aroused: for example, agreements concerning a future inheritance often contain a certain baseness and readily suggest desires contrary to—and sometimes dangerous to—the safety of him whose goods are in question. **c)** Invalidation also keeps violence and fraud out of private stipulations; it protects those who are weaker in age, mind, sex, and so forth.

To the minor. For it is evident that it is directly in the interest of the commonwealth that there be suitable sanctions against crimes, and that those things be prevented which of themselves are repugnant to the common good. It is, moreover, very conducive to the common good that particular justice be observed among the citizens. **Therefore.**

This is confirmed by a response of the Sacred Penitentiary of January 21, 1873. It was asked concerning an Italian law of May 1, 1866, which rendered invalid a stipulation by which the creditor reserved for himself the right to demand money in place of “paper currency”: “Whether a simple condition added to a promissory note, that restitution is to be made in no other way than in sounding money [coin], loses its force, even in the forum of conscience, through a subsequent civil law rendering it invalid.” It replied in these words: “As a rule, affirmatively, unless particular circumstances stand in the way” (*Acta S. Sedis*, vol. 7, p. 211). It therefore acknowledged this faculty of the civil power.

328. B. OF THE SECOND PART. These laws, however, are of strict interpretation.

A positive law which restricts natural liberty and takes away rights granted *per se* by nature is, as odious, to be interpreted strictly.

But. An invalidating law is of this kind. **Therefore.**

This is confirmed: **1)** by the authority of Suárez and Laymann. The former, *On Laws*, bk. 5, chap. 32, no. 7, affirms: “The words of the law are to be weighed rigorously and are always to be interpreted

strictly, because the subject matter is odious.” The latter has the following, *On Laws*, chap. 16, no. 9: “It seems that the answer should be that, if it does not sufficiently appear either from the subject matter of the law or from the words which the legislator used that his intention was to render the act invalid even in the forum of conscience, and the doubt therefore persists, the latter (or fourth)² sense of the law is to be preferred as the more benign.”

² According to which, of itself, before the sentence of a judge the act is null only civilly.

2) By article 1123 of the French Code, which promulgates the principle of the capacity of persons to contract; by article 1107, which, besides the agreements of which it treats, also admits others; and by article 1134, which acknowledges that agreements are generally efficacious.

329. C. OF THE THIRD PART. Concerning present-day positive law, it must be answered that, as a rule, acts which are pronounced null are not deprived of their natural force before the sentence of a judge.

1) **General Argument.** Present-day laws are made under such circumstances that, as a rule, it is not established—this is the least that we affirm—that they will immediately, or before sentence, to take away the obligation of the forum of conscience.

But. From the second part it follows that in doubt one must stand for the more benign part, or for the lesser invalidation. **Therefore.**

To the major. For: **a)** of itself, external peace and governance are now intended more in civil law. Cf. Suárez, *On Laws*, bk. 5, chap. 32, no. 7; **b)** today the external regime of coercion is so perfect and effective that immediately moral sanctions can be omitted with less inconvenience; **c)** the present-day civil legislator is accustomed more to neglect and disregard what obtains in the forum of conscience, so that there are writers to whom no law now seems of itself to bind the conscience. Although this is perhaps excessive, this at least is safely maintained: that civil laws are to be held as penal laws until a greater obligation is proved to be required by an open declaration or by the very end of the statute. (Cf. vol. 1.) But the grounds of obligation and of invalidation in the forum of conscience stand alike. Cf. Lehmkuhl, work cited, p. 33.

2) An Argument Proper to the Various Laws.

Concerning English law, Crolly, work cited, vol. 2, no. 196, and Rev. Fr. Slater, *On Justice and Right*, no. 60, bear witness to this; at the same time they confirm what has been said by the authority of jurists.

Concerning Belgian, French, and Dutch law, Fr. Van Gestel, work cited, from no. 71 to the end, proves the same, not without a display of learning. Moreover, as regards the French Code, the legislators, in ordering obligations, followed an imitation of Roman law, under which the fullest invalidation was held to be truly doubtful; and they signified their intention so obscurely that tribunals and jurists have very great difficulty in declaring the manner in which an act is infirm, even civilly.

Finally, Italian law is usually very similar to French law; and the doctors who wrote in Italy agree with us, such as the Rev. Fathers Bucciaroni, *Moral Theology: On Justice*, no. 92; Palmieri, *Moral Work*, vol. 3, pt. 3, no. 44, note; and Rev. Dr. Berardi, *Practice of Confessors*, vol. 1, nos. 1723, 2740.

Concerning German law, Rev. Fr. Lehmkuhl, *Das bürgerliche Gesetzbuch*, etc., p. 27 ff., confirms our positions.

330. III. Difficulties.

1. AGAINST THE FIRST PART.

a) A positive human law cannot take away a right granted by nature. **But.** A law rendering an act absolutely infirm, even for the forum of conscience, would attempt to take away the natural right of contracting freely. For it would declare invalid agreements which stand by the law of nature. **Therefore.** Such a law would be neither just nor valid.

Reply. I distinguish the major. A human law cannot take away a right which nature grants even in the composite sense of the law, **I concede.** In the divided sense, *I subdistinguish*: it cannot do this at pleasure, **I concede**; to the extent that the common good demands it, **I deny. I contradistinguish the minor.**

For the rights which nature grants to private persons must be harmonized with the rights which it attributes to the public authority for governing society. Hence, those things which nature permits it no longer permits if, for a motive of the common good, they are prohibited by law; while rights which it grants, but which are alienable, can, by the very law of nature—if the other requisites are present—be taken away from private persons by public authority, just as by a private agreement. For the rationale of the common good is more weighty. Yet, because human law can do nothing against the law of nature, a law would prohibit in vain what is commanded by nature, nor would it avail to take away an inalienable right. Cf. Suárez, *On Laws*, bk. 2, chap. 14, nos. 14-20, and Van Gestel, nos. 51, 52.

Instance. But. The common good does not demand this efficacy. For civil law is contained within the external order. **Therefore.** Invalidation in the external forum suffices.

Reply. I distinguish the antecedent. Civil law is contained within the external order insofar as it directly touches only external things, **I concede**; insofar as it cannot indirectly touch internal things also, or command from a motive other than an external sanction, **I deny.**

Otherwise, no law would now bind the conscience. You must distinguish the object of the precept from its motive and sanction. But invalidation in the internal forum pertains to those sanctions which, being more efficacious through external force, can legitimately be established for the end of society. The Creator of nature himself gave this power to princes.

2. AGAINST THE SECOND PART.

The cause of the common good is most favorable. **Therefore.** An invalidating law enacted for the common good ought to be understood in a broader sense.

Reply. I concede the antecedent. I distinguish the consequent. Unless the common good itself demands a restricted interpretation, **I concede**; otherwise, **I deny.**

For such a law restricts natural liberty. Moreover, it is generally expedient that this liberty be impeded as little as possible.

Nevertheless, one must not proceed rashly in this matter. We shall take this one point for confirmation: although St. Alphonsus, bk. 3 (4), no. 641, doubt 2, wished that promises of marriage made from a shameful cause be rendered fully infirm, others judge that this would be the reason why deceivers would become bolder. Many likewise hold doubtful the utility of a law which denies an action for exacting those things which are owed from gaming.

Article III. Supplements to the Doctrine

I. COROLLARIES.

331. A practical norm for discerning whether acts which are annulled by civil law are invalid in the forum of conscience before every sentence of a judge can therefore be conceived briefly thus: Unless the fullest abolition is proved necessary from the subject matter and end of the law,¹ or unless it is established from common understanding or a clear manifestation of intention that the legislator willed to impede every effect of the act, the validity of the act for the forum of conscience is to be upheld until the sentence of a judge has intervened. Therefore, the exceptions to the rule handed down in the third part of the thesis are to be derived from the subject matter or end of the law, or from a special sign of the will.

¹ For then the intention of binding immediately is contained virtually in the serious will of the law itself.

It is not enough, however, if the legislator has said: “We declare it null, invalid”; “This solemnity must be employed for its very existence.” For these expressions are ambiguous, since there is a twofold rationale of existence, civil and natural. But what clearer words, you will say, could be used to signify the intention of wholly annulling the act? Will it be necessary to say, “We render it invalid in the forum of conscience,” which is foreign to every usage of lawmakers? To this difficulty, which Carrière, no. 150, objects to us, we reply that words which are ambiguous of themselves can be clarified from the connected discourse and from public deliberation in Parliament, and that there is no need of a determinate formula.

Nor can it be established that acts which are extinguished from a motive of public order are immediately invalid in conscience. For such a motive does not always demand the fullest abolition.

Still less is the civil legislator, as Carrière, place cited, would have it, to be presumed to have touched the conscience unless his intention is established from elsewhere. For today, from his manner of speaking and acting, he rather gives occasion for the contrary presumption.

332. Concerning the sentence of a judge. Some writers, who nevertheless defend our side, seem to be deceived in this matter, while they imagine no sentence other than that by which an act is declared null by the magistrate. But, in order that a declaration of this kind can be obtained, it is required that the act bear some appearance of a valid act. Therefore, if someone has expressed merely in words an intention, even an absolute one, of bequeathing some good to Titius, that nuncupative testament, as they call it, does not exist even in appearance under the law which we use. Therefore, an action for obtaining its invalidation cannot be conceived. Only one judgment can therefore intervene here, by which the legatee who, relying upon such an intention, has retained the thing bequeathed to himself is condemned to restitution.

That judgment must be obeyed in conscience.

Briefly, therefore, we shall say: the sentence of a judge is to be understood in either of two ways—either that by which the title is directly rendered infirm, or that by which the thing seized under an unstable title is directly ordered to be returned, the title thus being tacitly annulled.

333. Consequences in the forum of conscience. 1. As a rule, therefore, before the sentence of a judge, if an agreement has been made which is invalid by civil law alone:

a) Unless natural equity stands in the way, it is licit to rely upon such an agreement and to accept the performance of the other party. That party, however, if by law it has a *condictio indebiti* (a right of reclaiming), will be able to reclaim what was paid, unless this again savors of fraud.

b) Apart from fraud, a person can with a safe conscience pursue his civil right of obtaining a sentence by which the act is wholly annulled.

Indeed, if the provision of the law is clear, so that there is no doubt about the future sentence, he himself can refrain from executing the agreement. For “what need is there of an empty circuit, that anyone should pay what will have to be restored to him?”² The other party, however, also ought *per se* to yield even before the sentence. Yet his obligation is one of charity alone: that of removing from the other party an inconvenience which is not in itself unjust.

² Laymann, *Moral Theology*, bk. 3, tract 4, *On Agreements*, chap. 9, no. 10.

c) Hence neither will it be licit *per se* to use occult compensation in order to take for oneself what is owed from such an agreement.³ For compensation contains coercion, which cannot be employed against him who has the right to keep the thing or to pay nothing.⁴

³ Formerly, most authors permitted occult compensation to him who was favored by an informal testament. But at that time, according to the more common opinion, that testament was held to be fully valid in conscience. Cf. Lessius, chap. 19, nos. 12, 22, 30. For, answering according to Roman law, they held succession itself by law to be a legal presumption of the will of the deceased; this presumption yielded to the truth of an open declaration, even if it were perhaps informal. Therefore, today we judge that those err who, relying on this opinion of the ancients while rejecting its rationale, have permitted compensation which is now denied by St. Alphonsus, bk. 3 (4), no. 283. Rev. Fr. Lehmkühl, vol. 1, no. 1148³; Ballerini-Palmieri, vol. 3, pt. 3, no. 713; and C. d’Annibale, vol. 2, no. 255, note 40, agree with us; to the last of whom the contrary mode of opining seems “most remote from all the rules of our science and of law.”

⁴ Authors are accustomed, after C. de Lugo, disp. 16, no. 95, to think it difficult to discover the true rationale why, as the common opinion holds, someone whose right is merely probable cannot use occult compensation. We confess that we experience no such difficulty. For two arguments spontaneously occur: because, in doubt, the condition of the possessor is better (cf. no. 256), and because he who is permitted to retain the thing cannot be compelled to pay. But he is virtually compelled if the thing is secretly taken away from him.

You should observe, however, that it belongs to the rationale of occult compensation, strictly so called, that someone secretly take from another a thing truly possessed by the latter. Therefore, before the sentence of a judge, we judge it permissible for a legatee who has been instituted by an informal testament to keep the thing bequeathed which perhaps was already in his hands under another title, such as deposit, or even to remove it from an estate in abeyance; but, so far as the principles are concerned, this faculty ceases as soon as the heir has begun truly to possess the patrimony of the deceased.

It indeed happens that by positive law that heir is deemed to possess from the very death of the decedent; but we judge that the general canon proved by this very thesis—that a civil provision does not of itself immediately alter the rights of the internal forum—is to be applied to this purely civil

possession (cf. no. 255, 4). St. Alphonsus, bk. 1, no. 35, as his answer is set forth in the note to the Heilig edition, seems to answer in this manner; and the Most Illustrious Bishop Waffelaert, *On Justice*, vol. 1, no. 579, plainly assents.

2. If an act has been rendered fully invalid by civil law, even in the forum of conscience, it is evident that what is nothing effects nothing of itself. Nevertheless, in order that this rigor may be suitably tempered, one must observe by what severity of enforcement the common good has been sufficiently provided for, and how the law has been received in practice and accepted by common custom. This is opportunely concluded by Rev. Fr. Van Gestel, no. 80, from the doctrine of Lessius, chap. 18, no. 22, and C. de Lugo, vol. 2, disp. 23, no. 156.

334. Concerning an inofficious donation, that is, one by which the legitimate portion of a necessary heir is impaired, French law provides that the act in which it is contained—a donation or a testament—is not civilly null, but that the heir can bring an action in court so that the things bequeathed or donated may be reduced to the just measure. Hence it is evident that, in the meantime, at least without injury to justice, the excess can be retained by him who received more by the absolute will of the deceased, provided that by no unjust devices he impedes the necessary heir from bringing an action for reduction.

Thus far the matter is sufficiently agreed upon.

But, in our opinion, Génicot, vol. 1, no. 677, undeservedly numbers among fraudulent means the dissimulation of a donation under the appearance of an onerous contract. But if a donor has the right to give his own things, by the same token he will be permitted to give his liberality that form which seems more accommodated to his intention. Nor is it forbidden by the positive law which we use that a donation be clothed in the form of an onerous agreement. Indeed, the use of this form is frequent. Thus this merely has a certain character of a concealed donation. Yet no one charges an inofficious donation with injury because it was made not openly but secretly. Moreover, it would be strange enough that, while no dissipation of a fortune is contrary to justice, a donation covered under the appearance of a sale should be repugnant to it.

II. SCHOLIA.

335. Full extinction from the intention of the parties. As Rev. Fr. Van Gestel, no. 74, rightly observes, if the parties themselves, as is customary in onerous contracts, did not will to agree except insofar as the act was lawful and protected by civil law, it is clear that a civilly null contract is not valid even in conscience, since the consent required by the law of nature was absent from such an agreement. Hence the practical importance of this disputation is almost confined to gratuitous contracts, or to those which, by reason of the person, cause, or subject matter, are known of themselves to be infected with a civil defect.

336. You will ask: what is the law if the party who has the faculty of rescinding has renounced this faculty beforehand?

The solution depends upon whether the rationale of the invalidating law also affects this renunciation. Hence:

a) If the nullity was introduced from a public motive—for example, that of agreements concerning a future succession—confirmation will effect nothing more;

b) If it was introduced to protect someone's weakness, a confirmation made by a minor, and so forth, will labor under the same defect as the principal stipulation. Hence he will nevertheless be permitted to have recourse to the protection of civil law.

Except if he has used malicious fraud, as when by a fictitious promise he fraudulently induced the other party to enter into the agreement.

c) But if the rationale was one of private order, the parties who knowingly omitted a necessary solemnity, relying upon a mutual promise of ratification, will be wholly bound by the faith thus pledged. Thus, he who truly promised the execution of an informal testament could not seek its abolition without acting unjustly.

337. You will ask why, after the sentence of a judge, you affirm effects in conscience which were denied before the sentence.

Because, unless after the sentence of a judge a right were acquired or extinguished in conscience, a perpetual and positive contrariety between the legal and moral orders would be introduced. Not only could a debt of the internal forum not be sought in the external forum; but a right granted by law could not be exacted without sin. He who was owner by force of law would be a thief in conscience. Everything would then waver. But it is not permissible to ascribe so irrational a will to the legislator, by which, as C. de Lugo, vol. 2, disp. 22, no. 252, says, "the law would be judged of little utility, since it would serve only to foster the inequity of him who, conscious of the validity and obligation of the contract, would nevertheless attempt to despoil the just possessor." Hence the rationale given in no. 327 then obtains.

Question VIII: Just Exchange and the Just Price

Aristotle, *Ethics*, bk. 5, chap. 8; *Politics*, bk. 1, chap. 9; St. Thomas, commentary on Book V of the *Ethics*, lect. 9, and commentary on Book I of the *Politics*, lect. 7; II-II, q. 77; John Duns Scotus, commentary on IV *Sentences*, dist. 15, q. 2; Molina, vol. 2, tract 2, disp. 347, 348; Lessius, chap. 21, nos. 17-81; C. de Lugo, vol. 2, disp. 26, sects. 4 and 7; Funk, *Recht und Moral in Bezug auf das Wirtschaftsleben* [Right and Morality in Relation to Economic Life] (*Theologische Quartalschrift* [Theological Quarterly], Tübingen, 1869); Waffelaert, *On Justice*, vol. 1, nos. 596, 608-619; vol. 2, no. 208; Croll, *Disputations on Justice and Right*, vol. 2, disp. 11; Cathrein, *Moral Philosophy*, pt. 2, sect. 1, bk. 5, chap. 2, art. 3, p. 367, § 2, and bk. 4, chap. 2, art. 1, p. 130, § 2, III, b, 3rd ed.; H. Pesch, *Zinsgrund und Zinsgrenze* [The Ground and Limit of Interest] (*Zeitschrift für katholische Theologie* [Journal of Catholic Theology], Innsbruck, 1888); Cauwès, *Course of Political Economy*, vol. 1, nos. 157, 158, 189-203; Liberatore, *Principles of Political Economy*, pt. 1, chap. 1, arts. 2-4; V. Brants, *Economic Theories in the Thirteenth and Fourteenth Centuries*, chap. 5, chap. 6, § 4, and chap. 8, § 2; Antoine, *Course of Social Economy*, chap. 11, arts. 1-4; C. Ilgner, *Commentary on the Opinions of St. Antoninus concerning Value and Money*; K. Marx, *Capital* (French trans., bk. 1, sect. 1), vol. 1, chaps. 6, 7, and vol. 3, sects. 1 and 2.

Article I. Preliminary Notions of Value and Price

338. The importance and difficulty of the disputation. From the general disputation concerning contracts, the rationale of beneficent agreements has become sufficiently known that henceforth it is permissible to direct attention to onerous agreements alone. In these, the sum and chief point is to establish a correct doctrine concerning value and the just price. For from these is to be sought almost every rationale for judging the equity or iniquity of an onerous contract.

Moreover, modern economists experience and proclaim this question to be grave equally in utility and in difficulty.¹

¹ Bastiat, *Harmonies économiques* [Economic Harmonies], V, *De la valeur* [On Value], expressed the importance of the matter thus: "Every truth and every error introduced into minds by this word (*value*) is a social truth or a social error"; while Rev. Fr. Antoine, place cited, bears witness to the difficulty in these words: "Ask the scholars beyond the Rhine; they will answer you that the theory of value is the dragon which guards the entrance to economic science." Cauwès, work cited, no. 190, affirmed that the question was at once great and arduous when he said: "The social question, at least in theory, would be settled if the notion of value could be the object of an indisputable analysis. This is what makes Proudhon say that value is the cornerstone of political economy. Unfortunately, there is no subject more thorny, nor one concerning which one can count more divergent opinions."

Hence a marvelous variety of opinions is observed, and the number of studies which treat this argument every day can scarcely be reckoned.

Therefore, we judge it better first to set forth briefly the rationales which commend themselves to us, rather than to report confused modes of speaking which easily pour darkness over the very eyes of the mind.

339. The true rationale of value. 1. Value, in general, can be called a quality on account of which, in some order, a person or thing comes into estimation. In this manner we speak of intellectual value, moral value, and so forth. It is apparent, however, that the peculiar force of this word in the economic

order—that is, in the order of goods which are the object of economic science—is not yet thereby indicated. In order that we may attain it:

2. It must be observed, with Aristotle, place cited, that there is a twofold use of things: one proper to each thing, by which, to adhere to his example, we fit a shoe, for example, to the foot; the other common with other things, by which we exchange the shoe for money or food. Each use, the Philosopher continues, belongs to things *per se* and not *per accidens*: in each we use the shoe insofar as it is a shoe.

a) There is therefore a certain prior rationale by which a thing becomes estimable: the thing's own utility, or its aptitude for satisfying some necessity or desire of the person possessing it. For the goodness of the thing is esteemed. But those things which exist for the sake of another derive their goodness from their relation to that end. Therefore, things which exist for the sake of the human person will be good and worthy of estimation by reason of their relation to the good of the person. Knowledge of that goodness is nevertheless required as a condition, for there is no desire or estimation of the unknown. The value which is called *value in use* rests upon this known goodness.² This designation, however, which is employed by some economists and rejected by others, is better omitted as superfluous. For, as Liberatore observes after J. B. Say,³ it is convertible with the perceived utility of the generic or singular qualities of some thing.⁴

² *Valeur en usage* [value in use], *Gebrauchswerth* [value in use], *value in use*, *valore di uso* [value in use].

³ Work cited, pt. 1, no. 14.

⁴ Thus the function of water is rather generic; in a horse, singular endowments are considered chiefly.

b) The faculty of exchanging things is, however, most precious to man, since it is the way of obtaining all the things by which we provide for our various necessities. Therefore, things which furnish this faculty have, by this very rationale, a certain weight worthy of estimation, that is, value. And this value, which some call *value in exchange*,⁵ is value properly so called in the economic order.

⁵ *Valeur en échange* [value in exchange], *Tauschwerth* [value in exchange], *value in exchange*, *valore di cambio* [value in exchange].

3. **But what things are endowed with this value?** It appears without much difficulty that they are those which at the same time:

a) **Contribute to temporal prosperity.** For there is no estimation of a useless thing. And temporal utility alone is considered in the economic order. Yet you should observe that this goodness is not absent from many goods which are spiritual *per se*, nor from virtue itself.

b) **Are useful insofar as they are possessed or owned, and of which, consequently, there is not an infinite abundance.** For in every exchange some ownership is intended. Hence, *per se*, there is no value of water or air, although their use is very great. Therefore, things must be rare in some manner.

c) **Are useful in that society where the exchange is to be made.** For example, a book will have no value in a wholly barbarous region.

d) **Whose utility is commonly known in that society.** Otherwise, an occasion for exchanging the thing will be present only *per accidens*, and this will scarcely confer any estimation upon the thing. The thing will then be desired and possessed only for the sake of that use which we called proper (339, 2).

4. From this we are led to the following conclusions of the greatest importance, by which we embrace almost the entire matter:

a) **Value properly so called is the proximate aptitude by which, in a certain society, goods can be exchanged for other goods.** Thus it is considered in first act; but in second act, when the exchange itself takes place. The very degree of value is defined by the quantity of those things which are given for obtaining another thing; it is therefore defined by the comparison which is made of this thing with others.

b) **It depends proximately upon the common estimation of a thing in some region.** Yet this estimation does not arise from caprice. To one asking why a thing is esteemed so highly, rationales will be adduced, various circumstances of the thing: the uses which it has, the abundance in which it is available, and the mode of selling it.

c) **This value is most closely connected with the commonly recognized advantages of possessing the thing, but not with those alone.** For we have just said that there is weight in the very mode of selling. Thus, if there are many who immediately desire to exchange some thing, it is apparent that from their increasing number there comes to be for each a lesser faculty of exchanging; and conversely, if there are few. But if, in the rule handed down in this place, you put the acquisition of the thing in place of its possession, you will perhaps say in a manner accommodated to the truth: that the common estimation, and consequently the value of the thing, which depends proximately upon the common estimation, is accommodated to the utility of acquiring the thing, as this utility is commonly perceived. For in this manner, what efficacy the mode of selling also has is not neglected.

d) Among the uses to which a thing is applied, some correspond to the natural necessity of feeding and clothing oneself, and so forth; others are devised more by the will of men itself, as are many ornaments, and so forth. But—and this must be kept well in mind—by reason of the very custom introduced, things acquire a true utility in that society. For, as C. de Lugo, vol. 2, disp. 26, no. 48, says, “it is honorable to possess precious things, or things which are thought precious by everyone.”

e) Briefly, therefore, it is permissible to connect in the following manner the ordered series of causes which, in this matter, succeed one another:

Value — Common estimation — The utilities of acquiring a thing as one’s own which are commonly perceived —

Nature or human customs, as the sources of these utilities.

f) The rationale of value, therefore, is not something merely subjective, since common estimation itself rests proximately also upon the objective utility of procuring the thing for oneself; but it is something relative and exceedingly variable according to the circumstances of time and place.

Indeed—and this must be carefully noted—the thing with which another thing is compared and which is assumed as the measure is itself subject to similar vicissitudes, that is, variations. If, for example, today you exchange a chair for three measures of wheat, and after some time for only two and a half, the cause can equally be either that chairs have become of less account or that grain has become dearer.

Finally, the foundation of value can be intrinsic to the thing by its nature, as when a quality or power has been adapted by nature itself to our uses—for example, food for the body—or it can come to the

thing from without, from human customs. But even an intrinsic quality of a thing will not produce value except through the mediation of common knowledge of the quality.

5. Nor should it displease us, on account of the importance of the matter, to direct attention to these two conclusions.

a) **Common estimation is indeed the rule of value.**⁶ Yet it will not be present unless men have freely judged concerning the thing as it can be known of itself. Therefore, a price which an artisan who alone practices a craft in some place, or another who has acquired a monopoly of things for himself, establishes at his own judgment from his prevailing position will not have proceeded from common estimation. Then common estimation is present only in appearance, as corrupted; but it remains to conjecture what the true estimation would have been without those artifices.

⁶ We shall soon consider below the kind of this rule.

b) **He who possesses some thing possesses it according to its value,** and it makes no difference that he cares little or nothing for the proper use of the thing. Thus, for most persons, the metal from which money is made has no use; nevertheless, whether it is possessed by a goldsmith or by a beggar, it remains of like value.

340. Concerning price. For the facility of transactions, a common sign of the value of all things was invented. That is, all things are compared with the same thing, which thus becomes the common measure of value. For this end, as Zech says (*Rigor Moderatus* [*Moderated Rigor*], diss. 3, § 20), “certain more noble metals were selected, not excessively abundant, suited to safekeeping and handling, which at the same time are of a very compact substance and admit of division into very many small particles.” This is money. You should observe, however, that although these metals were deliberately selected as more stable, they are endowed with one value in some common circumstances and with another in others. Therefore, money itself will vary.

The value of a thing measured according to that common measure and expressed in money is called the price. If it agrees with common estimation, it is just and true, whether the matter is then determined by the judgment of the people or of the prince, so that it is called the common price or the legitimate (legal) price.⁷ Indeed, neither will a price be judged unjust which, for the suitable governance of the commonwealth, the prince has determined as greater or less than the common estimation of things bears.

⁷ Concerning the question whether or not it is expedient that a legitimate price be established, it is useful even now to read the ancient controversies. Cf. C. de Lugo, disp. 26, no. 50.

Moreover, the common price is conceived more broadly, so that there is distinguished the highest, beyond which this estimation does not reach; the lowest, below which it does not fall; and the middle, which is almost equally distant from each. The rationale is that, on account of the many circumstances to be weighed, there are several probable opinions; while the prince, by fixing the price according to one of them, is able to define the matter more precisely.⁸ Cf. Lessius, chap. 21, no. 10.

⁸ There are nevertheless some, such as Molina, vol. 2, disp. 347, no. 3, and Rebellus, who judge that the common price extends more broadly because estimations and affections toward things are various.

Therefore, price formally is the signification of value by money.

341. Other opinions. 1. It is a common dictum of the Scholastics that the value of a thing depends proximately upon common estimation. Some, however, assign to this estimation a subjective cause more than others do. Molina, for example, judges the estimation of men to be partly arbitrary.⁹ Nevertheless—and this is the chief point—they affirm that, before the agreement of the parties, there is a natural just price, whose rule and measure is common estimation when the latter has arisen without frauds, monopolies, and so forth (Molina, disp. 348, no. 4). This doctrine also pleases modern theologians.

⁹ “From the fact that they willed to be so affected toward those things and that they willed to esteem them so highly.” Diss. 348, no. 4.

Among economists, some have retained this truth: that before the consent of the parties there is an objective rationale of value.

Yet not a few have indicated a false, or at least inadequate, measure of it: while some, such as Adam Smith, judged value to inhere in labor alone; others, such as J. B. Say, considered nothing but the utility of things, or, like Storch, the judgment concerning that utility; others ascribed value to rarity alone. Thus Senior. And these opinions are sufficiently obsolete.

Others, on the contrary, have denied that there is any norm by which value is defined, so that the consent of the contracting parties, bargaining according to the law of supply and demand (*offre et demande*), would not only manifest but would first effect value.

Among them, Bastiat¹⁰ attained the greatest celebrity. His thought is approximately this: Whatever nature furnishes or effects is and remains gratuitous, nor does it have weight worthy of any compensation; but formally only services (*les services*) which, on the occasion of things, persons confer upon one another are compared. Services alone, therefore, have value; and they acquire this value in the exchange or agreement itself from the subjective estimation of the parties. From subjective estimation, I say, since its causes are too various to allow any objective measure to be present. Hence he defines value as the relation of two services which are exchanged: “Value is the relation of two exchanged services.”

¹⁰ He proposed his doctrine in the book *Harmonies économiques* [*Economic Harmonies*], in which he attempted to show that things have been arranged so harmoniously by divine Providence that, while each one sought his own private utility, the greatest common good would be obtained almost spontaneously, provided that men enjoyed honorable liberty to labor, exchange, and so forth. Cf., as regards value, from the 1850 edition, pp. 173, 176, 177, 181, 212, 213, 228, 229.

Moreover, K. Marx assumed for himself a second principle, so that with Bastiat he maintained that the work of nature is furnished gratuitously, and with Adam Smith he derived all value from labor alone. Value, he says approximately, since it is something “relative,” posits a comparison of things among themselves.

But only similar things can be compared with one another.¹¹ Therefore, something common to all things must be discovered, so that in it the cause of value may be acknowledged. But the one thing which is found common to all things is this: a certain amount of human labor, for a definite time, had to be expended in preparing them. Labor, therefore, contained in the thing itself and measured by time, is the one source of value. If, therefore, a garment is exchanged for twenty loaves, it is a sign that, to make the garment, it was necessary to labor for the time in which twenty loaves would be prepared. (As regards the consequences for the present-day regime, cf. above, no. 176, δ.)

¹¹ The Philosopher, in Book V of the *Ethics*, place cited, already touched upon and resolved this difficulty. "He says," St. Thomas states, lect. 9, "that things so different cannot be commensurated according to truth, that is, according to the properties of the things themselves; but by comparison with human need they can sufficiently be contained under one measure."

Finally, not a few economists maintain that a norm underlies the law of supply and demand, that there is a natural value, and that, if there is room for competition, it is derived from what the thing ordinarily costs the one producing it, with a certain profit added.¹² Yet, as they themselves think, that norm, rather than being a norm of just value, indicates the value which it is expedient for the common good to prevail, or the value which those who exchange things pursue by their effort and generally obtain.

¹² Thus, for example, Cauwès, no. 194: "Natural value in exchanges with competition is proportioned to the cost of production, and the cost of production is the equivalent of the difficulty spared to the acquirer."

The distinguished Professor Funk approaches most nearly the opinion by which an objective norm is denied, while he places value in the estimation, not the common estimation of some region, but the singular estimation of the contracting party, by which the latter judges concerning the utility and advantages which he thinks will be his if he procures the thing. Therefore, any price whatsoever is just, provided that it is paid with full knowledge of the thing and with liberty.¹³

¹³ "Value according to its essence is nothing other than the significance of a good in the economic consciousness of the economic subject.... The price is perfectly just ... insofar as it is paid with free will and full knowledge of the object." *Theologische Quartalschrift* [Theological Quarterly], Tübingen, 1869, pp. 426, 427.

What, moreover, pleases us is exhibited by the conclusion now to be proposed:

Article II. Formulation and Arguments of the Conclusion

THESIS XXV

The true value of things flows proximately from common estimation and cannot be adequately measured by human labor.

By this value the just price of a thing is defined *per se*.

Nevertheless, the seller can also stipulate compensation for the special deprivation that he sustains from the cession of the thing, on account of its use or his own affection for the thing, but not *per se* on account of the buyer's peculiar advantage.

342. I. State of the Question. 1. THE IMPORTANCE AND INTENTION OF THE THESIS; OPINIONS. We approach the principal question, in which the entire doctrine of agreements is at issue, as is also the judgment concerning precepts handed down in the preceding age: whether these are still to be defended, or whether, on the contrary, the positions of more recent writers are to be substituted as truer, these precepts being weakened and antiquated. But by this position of ours, we follow the doctrine of the old Catholic school, whose force, as well as that of its adversary, becomes sufficiently clear from what was said above.

For the first part posits a principle concerning the value of things which is agreed upon among all the Scholastics; and it expressly opposes both those who deny an objective rationale of value and others

who by various ways are brought to think that nothing besides human labor is worthy of compensation.

The two following parts are corollaries of the former. For by them, against many Liberals and Rev. Dr. Funk, we affirm that there is *per se* an objectively equitable and just price, defined by true value, and that, beyond this, nothing can be compensated except the special utility or affection of him who sells the thing. Yet sellers today quite frequently attempt to exact a price according to the buyer's special utility.

And besides Rev. Dr. Funk, to whom these practices are entirely acceptable, some other Catholics, such as Cardinal Gousset, *Moral Theology*, vol. 1, no. 840, against the unanimous consent of the Scholastics, have begun to reprove them less. Yet all pronounce him guilty of injustice who has sought a greater profit for himself from another's want or poverty.

2. THE TERMS ARE EXPLAINED.

From common estimation, and by no means from the estimation of the contracting parties, as Rev. Dr. Funk thinks. Moreover, that estimation will be of some place or of an entire region, according as the frequency of commerce and the ease of travel define the area where one custom concerning that thing prevails.

Flows proximately, so that we may indicate those objective rationales, most of them intrinsic to the thing, upon which that estimation depends as upon a higher rule.

The true value of things. Therefore, we indeed acknowledge that the denomination of value is formally from without, but at the same time we maintain that it is truly predicated of things. It is apparent that we are treating here of the value which many call value in exchange, which was described above, no. 339, 4.

Which cannot be measured by human labor: whether that labor be understood which was in fact expended upon the thing, or that from which those procuring the thing have been freed, or that which is customarily employed. For this opinion is proposed in three modes, none of which we placed definitely in the conclusion, since we reject them all.

Adequately measured. Therefore, we by no means deny that necessary labor contributes very much *per se* to the valuation of things; otherwise, men would not so easily have erred by various and specious errors. But we maintain that this labor cannot be held as the adequate norm of common estimation.

By this value, therefore, with the utility which we called proper to the thing being disregarded.

Is defined per se. *Per se*, I say: for, under certain circumstances, the legislator could for a public cause establish a greater or lesser price; and, moreover, there are things concerning which common estimation is not occupied. What is to be said concerning these things we shall give in the corollaries, no. 350.

The just price of a thing. The price, or value expressed in money, is paid in a sale. By just we mean that which commutative justice imposes. Therefore, we maintain that one price of this kind exists, and we hand down its norm.

The seller, however, that is, he who exchanges a thing for money,

Furthermore, so that we may signify that it is a question of increasing the price, not of diminishing it;

Can stipulate, or exact by agreement;

Compensation, by means of money, the quantity of which will again have to be defined either from common estimation or, if this is lacking, from the rule to be handed down in no. 350;

For the special deprivation: special, I say, and therefore not that which is generally contained in the abdication of a thing. For the latter, since it grounds common estimation, has already been compensated by the just price itself;

Which he sustains from the cession of the thing on account of its use, that is, if the thing is particularly convenient or useful to him. Suppose, for example, that a field is in question which, because it adjoins his house, can easily be converted into a pleasant garden;

Or his own affection for the thing, as if the thing renews for him the memory of parents or of friends from a bygone age;

But not per se, or insofar as this proceeds from the force of the onerous contract of sale. The rationale will be different if there is joined either a rationale of beneficence or that of some partnership in profit;

The buyer's peculiar advantage. Again, you should understand an advantage arising either from affection or from utility, and consequently also one which is profitable.

II. Proof.

343. A. OF THE FIRST PART. 1. The true value of things flows proximately from common estimation.

It cannot be denied that this force belongs to common estimation: that it attributes to the things which it affects an aptitude by which they become *per se* convertible into other things. But this aptitude, as has already been said, is a weight worthy of estimation, truly inhering in the thing and therefore engendering value properly so called in the economic order. This is so true that very many things are not sought or kept by many except on account of that aptitude.¹ For for what other cause do artisans make garments, or merchants procure wheat and oil? But as long as a thing is not commonly esteemed, it does not have that general aptitude. It happens *per accidens* that someone, from a certain special interest, pursues such a thing with affection and wishes to procure it for himself. Therefore, things of this kind are not desired except on account of the utility which, following the Philosopher, we called proper; and common sense itself declares them destitute of value. Hence the following brief argument is maintained:

¹ This is illustrated well enough by K. Marx in the cited chapter, as when he writes: "To produce commodities, he [man] must produce not only use-values, but use-values for others, social use-values.... Commodities ... are commodities only because they are two things at once, objects of utility and bearers of value."

The true value of things in some society is such an aptitude of conversion in that society on account of which they become desirable.

But. An aptitude of this kind is induced proximately in things by common estimation, and by it alone.

Therefore. The true value of things flows proximately from it.

2. This value cannot be adequately measured by human labor.

a) **Universal argument.** Things are commonly esteemed because men commonly know that the thing is usefully possessed or procured. For, as has been said, things are worthy of estimation insofar as they serve men, while common estimation is directed toward the ownership of things. Cf. no. 339, 3.

But that utility is not adequately measured by human labor. **Therefore.**

To the minor. Who could doubt that very many things are so constituted that the utility of a finite supply, which it is therefore advantageous to possess, is partly inherent in them from nature itself? Hence, although human industry is perhaps necessary to transport things or to reduce them to a better form, nevertheless the degree of value cannot be exacted according to this labor, whose parts are often very slight. Let there be, for example, two veins of coal to be worked with the same labor. Will not the better coals be valued more highly on account of their innate quality? But there are six hundred examples in which, if you judge the matter rightly, you will perceive that labor has value on account of the natural qualities of the thing to which it is applied, rather than that the qualities borrow their value from the labor joined to them.

b) **An indirect argument, by refuting K. Marx.** He employs this principle: that for the exchange of two things it is necessary that something common to each be found, which he denies can be anything other than labor considered “quantitatively.”

He therefore establishes that things have value because and insofar as they contain human labor, “insofar as they are crystals of this common social substance.”

Yet he says that the labor contained in a commodity is to be estimated from the quantity commonly required for furnishing that commodity.

Finally, he admits that, if a shorter way of making things of some kind is discovered, value is detracted even from things which had been made before.

But now: **α) As regards the principle,** equally with labor, this other characteristic common to things can be said to inhere in them: aptitude for human uses. But if Marx objects that these uses vary in form, we shall reply that human labors vary in form no less. But if he argues again that labors of various forms agree in the one common character of human labor, we shall say with equal right that the various uses are all to be ascribed to human uses.

β) As regards the other conclusions, 1) They seem to conflict with one another. For if things truly have value as containing human labor, as “crystals” of that labor, the measure of this value cannot be some quantity commonly required. For the thing does not contain the mean quantity of labor, but that quantity which was in fact expended upon it. But if, from a new invention, a lesser quantity of labor is now required, how could this fact, wholly extrinsic to the thing, break those precious crystals which lay hidden in it?

For another rationale by which he disagrees with himself, cf. Cathrein, *Der Socialismus [Socialism]*, pp. 94-96, or the note placed here below.²

² In order to understand the matter, it is necessary to recall that there is question at present of explaining a certain fact: why, for example, a certain weight of iron is exchanged for so many meters of cloth. K. Marx gives this rationale for the fact: that the same quantity of labor inheres in that weight of iron and in those meters of cloth. But if labor is the sole

cause of value, it is evident that in profitable businesses the absolute increase of value must be found in that part of the money which is converted into labor, that is, in wages; while the other things which are required must be subject to no change of value and must be held as “capital” which in this respect does not change in itself. The ratio of that increase to “variable capital,” or wages, will be expressed as (i/v) , if (i) signifies the absolute increase and (v) the variable capital, or the sum of wages. But in estimating the profit made, the remaining capital to be recovered by the business, (c), must be computed, so that the profit can be exhibited, for example, in this form: $(l=i/(c+v))$. Hence it is apparent that, if K. Marx’s doctrine is to stand, the profit itself must change according to the varying relation which (c) has to (v); that is, the smaller the fixed part of the capital is, the more profitable the business would become. This, however, is contrary to experience, which shows that the relation between (c) and (v) has no *per se* bearing upon profit. K. Marx had acknowledged the fact and the difficulty, and had postponed his reply until the third volume of his work. But what did he himself do in that third volume? He concedes everything and admits that things are not sold according to their value—or the labor which they contain—but that some are valued more highly and others remain below this sum. The rationale which Marx had adduced for the fact to be explained is therefore judged futile by his own mouth. Concerning these things, cf. Marx, *Capital*, vol. 1, chaps. 6 and 7 (French ed., chaps. 8, 9); vol. 3, sect. 2, p. 132.

2) Nor are they materially true. Crops vary both in quantity and quality, not only according to the place where they are sown but according to the weather which we experience in individual years. Now, if the quality alone changes—the same may be said of abundance—the value will vary. Yet in this variation no relation to labor, whether expended or commonly required, can be detected.

What of the fact that, later in the same place, Marx denies that formal value belongs *per se* to human labor, while surely, where the sad servitude of men rages, these labors are held at a price, and, even in our society, the labor by which someone, for example, guides another by the hand—to take an obvious example—is by no means without value?

What of the fact that Marx on the one hand rightly acknowledges that the proper utility of a thing is engendered at the same time by human labor and the powers of nature,³ and on the other affirms that in exchange this utility is wholly disregarded,⁴ so that he concludes that, this utility having been omitted, nothing remains in a thing except that it is the fruit of labor?⁵ By this manner of arguing an open absurdity is scarcely not committed. For from such premises—“The utility of things is the common offspring of labor and nature”; “But this utility is to be omitted”—from these premises, I say, it cannot, without absurdity, be concluded that something remains which is proper to labor or to nature, so that, according to Marx’s positions, labor alone is said to remain; but, so far as the force of an argument of this kind is concerned, either both must nevertheless be said to remain, under another respect, or neither to remain and both to have vanished together formally. And yet you should observe that, according to Marx, labor is not the cause of value except insofar as it is the cause of utility.⁶ For this marvelous philosopher, in the same place where he maintains that the proper utilities of things are disregarded in exchange, at the same time admits that value is founded upon these utilities.⁷

³ “Labor is not the sole source of the use-values which it produces.... It is their father, and the earth their mother,” p. 17.

⁴ “It is evident that abstraction is made from the use-value of commodities when they are exchanged,” p. 14.

⁵ “Once the use-value of commodities is set aside, only one quality remains to them, that of being products of labor,” p. 14.

⁶ “To produce commodities, it [labor] must produce not only use-values, but ... social use-values. No object can be a value if it is not a useful thing,” p. 16.

⁷ “In the society which we have to examine, they [use-values] are at the same time the material supports of exchange-value,” p. 14.

What are all these things, except certain empty devices, perhaps ingeniously devised to blind a truth of things sufficiently manifest, and to which no one of sound mind who has a mind free of prejudices would assent?

344. B. OF THE SECOND PART. By this value the just price is defined per se.

Apart from a law which changes the subject matter of rights, justice demands that in contracts from which the intention of beneficence is absent there be equality of what is given and received. For the justice which among private persons protects personal equality is called commutative, as that which must especially be observed in exchanges.

But. This equality is had by a price which, if this value is present, is defined by it.

Therefore. Apart from a law, and provided that this value is present, the just price is defined by it.

The major is sufficiently evident and is confirmed by this reasoning of St. Thomas: “What has been introduced for the common utility—such as buying and selling and other contracts of this kind—ought not to be more to the burden of one than of the other.” **Therefore.** “A contract ought to be instituted between them according to the equality of the thing.” II-II, q. 77, art. 1, corpus.

To the minor. In exchange, the thing is used according to its value.⁸ Therefore, two values are formally compared, and equality is to be observed between the values. **But.** This is observed by establishing a price defined by value. For since price is nothing other than value expressed in money, he who receives a price of this kind obtains the same value in money as he gave in the thing.

⁸ St. Thomas, commentary on Book I of the *Politics*, lect. 7.

This is confirmed by Roman law, law 63, pr., Digest, “On the Falcidian Law” (XXXV, 2), where Paul is cited as saying: “The prices of things are determined not from the affection or utility of individuals, but commonly.”

That there is a just price, and that a contract of sale ought *per se* to be completed freely, is already indicated by St. Maximus of Turin, in reproving purchases made by avaricious usurers: “It is good to buy, but in peace, what is sold by its owner’s will, not amid plunder. Consider the origin of the contract, the author of the sale, and the quantity of the price, and you will understand that you are the purchaser of plunder rather than of a sale.” *Homily*

96 (Migne, P.L., vol. 57, col. 478). Cf. also St. John Chrysostom, *On Matthew*, Homily 56 (57), no. 6 (Migne, P.G., vol. 57, col. 557).

345. C. OF THE THIRD PART. 1. The seller, however, can also stipulate compensation for the special deprivation which he sustains from the cession of the thing, on account of its use or his own affection for the thing.

For no one is compelled gratuitously to sustain a loss for the benefit of another.

If, therefore, *per accidens*, as St. Thomas says, place cited, the sale turns to the loss of the seller of the thing, who is deprived of a thing specially useful or dear to him, he can rightly exact that this loss be repaired for him by a new performance of the buyer, or by an increase of the price. **Therefore.**

2. But he cannot *per se* stipulate compensation for the buyer's special advantage.

N.B. We shall not deny that we experience some difficulty in this matter: both because, in defending our position, we disapprove a usage which Billuart already testifies to be common and received into the customs of the people; and because we are moved somewhat toward the contrary part by an argument which is of this kind. Just as, with the proper use of the thing disregarded, and even if he perceives no utility from the thing itself, the seller can exact the price defined by common estimation, why can he not, with the proper use likewise disregarded, exact a price consonant with the right estimation of the buyer? Or, otherwise: the commonly recognized utility of the thing to be acquired grants a general faculty of exchanging which the possessor of the thing can use. What prohibits him from using the special faculty of exchanging which arises *per accidens* from the special utility of the acquirer? What more can common estimation do in general than the estimation of the parties in a particular case?

Nevertheless, in order that we may defend our position, we are moved not only by the very weighty authority of the doctors who approved it by unanimous vote and by the perpetual tradition of the Catholic school, but also by the weight of the rationales. Let there be, therefore:

a) An indirect argument, whose efficacy seems greatest to us. If the contrary opinion is conceded, we fall into consequences evidently absurd.

α) The just price not only can be exacted but must be paid. Therefore, if the buyer's special utility changes the rationale of the just price, the buyer will have either to increase the price spontaneously or at least to indicate that utility, so that the seller can use his right of increasing the price. Yet no one will have said this; and buyers have recourse to various devices so that this utility may remain unknown.

β) Moreover, just as a thing can be specially useful to the buyer, so money not rarely brings the seller a special advantage of profit. Yet he does not therefore judge himself bound to detract something from the price, even if he attempts to reckon the buyer's special utility. Are not these things wholly arbitrary?

γ) As Molina, vol. 2, disp. 348, no. 6, already argued, it would then be licit to sell more dearly to a poor man than to a rich man. For does not special need disclose a special utility? Therefore, the adversaries themselves gratuitously distinguish the case of necessity, which they do not wish to be considered by the seller, from profitable utility⁹ or utility of affection. Nor may they object that he who is pressed by necessity lacks liberty. For both he who wills to provide for his own necessity and he who desires to seize an occasion of profit are pressed by the necessity of some end or intended good to which one way lies open: the procurement of the thing. The obligation of charity can vary from this, but not that of justice.

⁹ They nevertheless concede that certain non-profitable utilities can be reckoned, as if, on account of its situation, a property increases the pleasantness of a house, or if the thing refreshes the memory of one's parents, and so forth.

b) A direct argument. **α)** Someone's special utility does not increase the value of a thing, since it is not commonly esteemed.

Therefore. It does not enter into the just price, nor can it be reckoned unless there is question of preventing or repairing a loss.

But there is no loss where the utility belongs to the buyer. **Therefore.**

β) The price is to be paid insofar as the thing pertains to the seller. But the thing pertains to the seller according to its value and according to the utility peculiar to himself, but by no means according to the utility which first arises with the buyer. Thus, approximately, St. Thomas and Molina, places cited.

To the rationales objected above, however, we reply:

That less attention is to be given to received customs or common sense where there is question of conclusions which are remote from principles, especially if, as here, men are easily deceived by the pursuit of their own utility. You may add, moreover, that minds have easily been disturbed by the positions of the Liberal school and have conceived a less genuine rationale of the true and the just.

Then, as regards the intrinsic rationale, the common estimation of a thing has a certain force which a person's own estimation lacks. It gives the thing, as has been explained, a new and most useful aptitude which is designated by the name of value and is possessed together with the thing. The utility or affection of one person does not do likewise. The possessor of a thing is not prohibited from using the special faculty of exchanging any more than the general faculty. Yet the use must be right. It is right if, in the former case, he exacts the price of a quality which among all is worthy of estimation, but not if, in the latter case, he wills to exact compensation for an aptitude which is to be highly valued by the buyer alone.

346. III. Difficulties (cf. also no. 345, N.B.).

1. TRUE VALUE CANNOT FLOW FROM COMMON ESTIMATION. For true value ought to be in the thing itself. But an estimation which is wholly from without cannot place something in the thing itself. **Therefore.** Either there is no true objective value, or it does not flow proximately from common estimation.

Reply. I deny the assertion. To its rationale, I distinguish: true value ought to be in the thing itself as a certain physical property, **I deny;** as a certain moral property, almost as jurisdiction is truly in the judge, **I concede. I contradistinguish the minor.**

For just as, by the extrinsic designation of the prince or of him to whom the right belongs, a judge truly acquires jurisdiction, so by external common estimation a thing acquires true value. The deeper rationale of this fact is that value and jurisdiction are both contained in the intercourse of men with one another. It is therefore sufficient for the effects which arise therefrom that they can be known by men, which demands no physical mutation.

Instance. That norm is too uncertain to be capable of being employed. For it is conceded that it can be false; and it will in fact be false unless the estimation corresponds to the true utility which, in some society, the thing commonly brings to him who procures it. But this utility depends upon so many circumstances that it is most difficult to know. **Therefore.** This rule will always be suspected of falsity and therefore cannot prudently be employed.

Reply. I deny the assertion. And to its rationale, I distinguish: it will be false unless it corresponds to that true utility as it can be commonly known and is known of itself, **I concede;** it will be false unless it corresponds to the true utility as it exists objectively, **I deny.**

Therefore, it will be false only if men have been impeded by force or fraud from being permitted to use their own judgment. Otherwise, the judgment which men spontaneously make, deceived by no evil devices, and which consequently has not been vitiated by fear or fraud, is a certain norm of true value, which nevertheless ranges within the limits of the highest and lowest price.

2. THE JUST PRICE IS DEFINED NOT BY VALUE BUT BY THE CONSENT OF THE PARTIES. For “no injury is done to one who consents.” **Therefore.** A price which has been obtained by no force or fraud cannot be unjust.

Reply. I deny the assertion. To the rationale, I distinguish the antecedent. No injury is done to one who consents if the consent is full, or voluntary both simply and in a qualified respect, **I concede**; if the character of the voluntary is mixed with the involuntary, **I deny**. Then, at least sometimes, injury is not removed by consent of this kind. Cf. above, nos. 141, 146.

Unless an intention of liberality was present, the buyer certainly does not will to pay anything except the value of the thing, or the price which the other can justly exact *per se*. But if the latter exacts more, he abuses at least the “relative” necessity of the buyer. I call relative necessity that which arises from the connection of the thing to be acquired with the intended end or good.

3. A PRICE OF AFFECTION CANNOT BE EXACTED.

For the cause of that affection often exceeds the order of the goods of fortune. It is, for example, the memory of a friend, and so forth. **But.** There is no comparison of things which pertain to diverse orders. And it is confirmed: for injury to life or honor is not, strictly and of itself, to be repaired by money. **Therefore.**

Reply. I concede the major. To the minor: there is no comparison of itself, or properly so called and in involuntary compensation, **I concede**; in a voluntary exchange, **I deny**.

Although affection pertains to a higher order, someone can consent to undergo an inconvenience of a higher order either gratuitously or with any monetary compensation received; just as in offenses compensation of this kind can justly be imposed by the magistrate. The rationale of a voluntary exchange is therefore one thing, and that of an involuntary exchange another. Moreover, what do we hear more frequently than comparisons of this kind: “I would not wish, for a thousand coins, to be deprived of your company, to sustain this ill will,” and so forth.

4. IT SEEMS THAT THE BUYER’S SPECIAL UTILITY CAN BE RECKONED.

For he who sells a thing also procures this utility for the buyer. **But.** The value of the thing can be estimated according to the utility received by the buyer. **Therefore.**

Reply. I distinguish the major. He procures that utility through a formal communication, **I deny**; through a material communication, **I concede. I contradistinguish the minor.**

To the major. A formal communication is had when something possessed by one person passes to another. But the thing in the hands of the seller was not endowed with that utility, which consequently was not formally communicated.

Moreover, to the minor. Value cannot be estimated except according to utility received through a formal communication. For only something proper to oneself can be exchanged. But the utility which

was not in the hands of the seller was not proper to him. Cf. St. Thomas, here, reply to obj. 3; and Lehmkuhl, vol. 1, nos. 1050 and 1118.

Instance. But then the seller who cannot derive the common utility of the thing ought to sell it below the true price.

Reply. I deny it. Because this utility grounds the value which is possessed together with the thing. Cf. C. de Lugo, vol. 2, disp. 26, no. 43, and above, no. 339, 5.

Article III. Supplements to the Doctrine

I. COROLLARIES.

347. The mean of the thing in contracts. Therefore, even in contracts an objective comparison of things is made, and, without any formal fault, it happens that the parties depart from the equality which commutative justice will command to be restored. And thus it again appears that justice has the mean of the thing. Cf. no. 36.

Therefore, although, with the Scholastics, we concede this to Rev. Dr. Funk—that formal injury is not committed unless someone abuses fraud or force—we nevertheless cannot weigh the justice of agreements in this balance. Indeed, sins do not even have their specification from these artifices, but from the object. Hence, unless fear inflicted upon a person contains a personal injury, the sin will be the same in species whether you have abused cunning or a prevailing position to obtain an excessive price.

348. Exchange conduces per se to the utility of both parties. The rationales given show in what manner each party makes a gain *per se* from a just exchange. For while, at a just price, one party cedes to the other a thing which is less useful to himself for its proper use, he preserves the same value and procures a thing of greater proper utility.

349. In what manner the seller's utility is to be reckoned. If we speak strictly, since the just price of a thing is that which equals its value, he who in an exchange wishes his own utility to be made good and the price which is called the price of affection to be paid to him in fact asks for something *beyond the just price*; rightly, however, because he compensates for his own inconvenience. “Thus,” St. Thomas accurately says, II-II, q. 77, art. 1, corpus, “something can licitly be sold for more than it is worth according to itself, although it is not sold for more than it is worth to its possessor.” And Cardinal de Lugo, disp. 26, no. 43: “Beyond the just price he asks for something, not for the thing itself, but for that affection or loss.”

From this it also follows that this extraordinary price is owed under a title different from that under which the common price is owed,¹ that it is not to be offered spontaneously, and that it can be exacted only from one who is aware of the cause. “It is necessary,” says Molina, disp. 348, no. 6, “that the agreement be made upon this point, so that the buyer, knowingly and prudently, may buy the things.”

¹ It is as though there were a second purchase and sale added to the sale of the thing, namely, that of the seller's utility and advantage, which the buyer is free to refuse.

350. Where there is no common estimation, there will be no value of the thing properly so called. Therefore, the seller's loss from his own use of the thing, and from its hoped-for value if it perhaps appears that the thing will soon become subject to common estimation, will then merely have to be compensated. These matters, therefore, will have to be weighed by prudent men, to whom the Scholastics judge that the case should then be referred. Cf. Molina, disp. 348, no. 9; Cardinal de Lugo, disp. 26, nos. 46-47. At the same time, these same authors concede that there are certain things which can be estimated at the discretion of the seller. Lessius, chap. 14, no. 53; Cardinal de Lugo, place cited.

So that we may speak a little more explicitly about this matter, the following points seem to us worthy of careful note.

1. Although, if common estimation is entirely lacking, there is then no place for a strictly objective price, nevertheless, from the preceding rule of justice, it remains true that no one is to be deprived of his own thing while reasonably unwilling. Therefore, according to a reasonable estimation of the utility or advantage which he himself receives from the thing possessed, the seller will be able to define the sum of money to be paid to him.

The buyer may safely conform himself to that determination while keeping silent the utility peculiar to himself on account of which he wishes to procure the thing for himself.

2. Rarely, however, will consideration of common estimation be wholly absent. For if it should perhaps appear that, after a short time, the thing will enter into common estimation, and this is known in itself, this very hope has a just price, which must be compensated in the exchange of the thing.

Furthermore, common estimation is already present inchoatively from the moment that there are some who desire to have the thing. For just as the utility of a thing to be acquired, if it is commonly perceived, through the mediation of common estimation engenders a universal aptitude for exchange which is called value, so also the estimation of a few engenders a restricted aptitude for exchange, which is a certain inchoative value possessed by the seller and to be compensated to the seller. The measure of this inchoative value will be the importance of the estimation itself, not indeed the whole of it, but diminished by the difficulty of finding others who are interested in this thing.

3. Briefly, therefore, we shall speak as follows. In the exchange of things which lack value properly so called, the seller must be compensated for the objective hope of a value soon to come, or for the importance of an inchoative value, and, in addition, for that which the seller, on account of his own estimation of the thing, judges ought to be exacted for himself. If the first two are absent, the thing will be estimated at the discretion of the seller.

N.B. Take care also that you do not think that things desired only by a certain class of persons, perhaps not a very numerous one, lack a just price. Of this kind are, for example, paintings and various works made by art. For although most people disregard the proper utility of these things, they can nevertheless readily be exchanged. For the interest with which persons of a certain class are drawn toward them is commonly known. This suffices so that the common estimation of those things is not lacking, although perhaps few can define the price corresponding to it. Therefore, the Scholastics cited above concluded, not without reason, that there are things whose case must be estimated by prudent men, and others which are left to the discretion of the seller.

350bis. The office of common estimation is not only to declare the value of things authoritatively, but proximately to effect that value. And we judge that this is perceived sufficiently from the manner in which our conclusion was stated and proved. We also readily confirm it, because if common estimation merely declared value, it would no longer be necessary in any way. For why could not a private declaration, in this matter, supply for the lack of an authoritative declaration?

This, however, is admitted: if you know of a thing which, for example, is fitted to bring the greatest utility to a barbarous people, as long as your knowledge has not pervaded that society itself, the value of that thing will remain null, or it will be present only inchoatively, on account of the diffusion of that knowledge which has begun.

Therefore, the goodness of a thing does not engender value unless there is added a common estimation of that goodness, in which estimation, moreover, some part is left to men's opinions, prejudices, and even free will; and in this manner it comes about that, through common estimation, things are not only declared but are proximately made apt for exchange.

A certain difficulty, however, must be met. For, as we saw in no. 339, 5, falsehood can underlie common estimation, and we then said that it must be corrected. If it is the cause of value, how can it be a cause which does not operate necessarily and always as soon as it is in act?

But it is not so remarkable that the efficacy of a proximate cause should sometimes be frustrated in its force, if it should happen to depart from its remote rule. Thus, human law is the proximate cause of obligation; nevertheless, it has no force to command against the divine law. Thus also a sentence by which a judge, in pronouncing the law, awards a thing to one party is vitiated by an error of the judge or by deception, and it grants no true title to the party prevailing in the case. Thus finally, in a more universal manner, error and deception remove consent and its efficacy. Therefore, the common estimation of men, insofar as it has been altered by fraud or force, is to be judged involuntary. And just as he who has deceived a magistrate, in order to repair the losses caused by the fraud, ought rather to conform himself to the sentence such as it is presumed it would have been if the fraud had not occurred, so too, in the present case, common estimation—which you would better call a false appearance of estimation—is to be reformed according to the truth. Therefore, those who have publicly lied about the qualities of some medicine, those who by false reports have changed the public reputation and estimation of some business undertaken or to be undertaken, and those who by various devices have produced an artificial scarcity of certain wares—all these are the cause of a price which can by no means be regarded as objectively just.

351. Social value. Value properly so called, since it arises in society and from common estimation, and promotes commerce among men to no small degree, contains a certain social function of things, on account of which it seems to us elegantly called *social value* by Cauwès.² It can be lacking in a thing either because the thing is such that it does not possess a utility capable of being commonly esteemed, or because this utility is hidden *per accidens*. In that case, a condition rather than the cause of value is lacking.

² The Philosopher had already said, *Ethics*, bk. 5, place cited: "If there is exchange, there will also be society."

352. What if a thing is sold more dearly to outsiders? If the value of things increases from an abundance of buyers, it is evident that merchants are free to ask a just price from outsiders and to

remit something from it in favor of the inhabitants. Nor are they prohibited from exacting the highest price even from outsiders. Nevertheless, to raise the price of things for them beyond measure because, for example, the things are held at a higher price in their own region savors of fraud—a fraud which, though sufficiently customary, is perhaps committed in a kind of good faith, but which sound doctrine cannot approve. Cf. Cardinal de Lugo, disp. 16, no. 51.

Therefore, the market to which the thing comes is to be considered. This is sometimes not free of all doubt where there is question of large transactions which are contained within “international” commerce. For those who operate immense factories are accustomed to appoint agents who sell the products of the factory in foreign regions; and merchants are also accustomed to visit foreign markets. Sometimes, as when a transaction is conducted by telegram, the buyer will say with equal right, “I bought in Belgium,” and the seller, “I sold in England.” When these things occur, we judge that the parties can consider either price which they prefer to choose and can obtain without force or fraud. In any case, these prices are not accustomed to differ greatly from one another.

353. Concerning the law of supply and demand. There is some truth in this celebrated formula insofar as a comparison of the supply of things with the number of those who desire them inadequately governs variations in price. For we know that the common estimation of a thing and its value itself depend chiefly upon the perceived utility of the thing and the difficulty of obtaining it. But the formula is false if you take it as a norm of price, whether proximate or remote.

It is not a proximate norm. Rather, the supply of those offering or seeking a thing is a certain circumstance which men are accustomed to consider in estimating the thing, so that it partly grounds the common estimation according to which the true price is proximately exacted. Further, for it to be a proximate rule, it would be necessary that, by some constant ratio, the more demand increased, the more the price would increase, and conversely. But no such ratio exists. If the supply of wheat offered is made smaller by half, the price will increase more than twofold.³

³ Thus C. Gide, *Principes d'économie politique*, pp. 74-76, where he very well refutes that false saying.

Nor is it a remote rule. For, on account of the price of things itself, things will be more or less sought and offered, so that this relation is partly subsequent to price. For when wine becomes cheaper, will there not be more buyers? Will merchants not endeavor to bring wares to the place where they are valued more highly?

354. Concerning monopolies. a) Properly speaking, a monopoly designates a privilege granted by public authority to a private man or to the treasury, by which the faculty of selling certain wares or of transporting them is reserved to them alone. Often the price is then also fixed by law. Such a legal monopoly, introduced for a just cause, is not to be disapproved.

Related to this is the monopoly which an inventor enjoys for some period of time by virtue of the instrument called a *brevet d'invention*. Nor is this illicit, provided that the price is not increased excessively. Nevertheless, the just limits are not so readily determined.

b) A monopoly is private when one or more persons bring it about, by purchasing all the things of a certain kind, that they alone in fact sell them. Provided that they do not exact a price beyond the highest price which the thing would otherwise have, or induce that price by fraud or force, it is not unjust. But if the poor thereby suffer notable detriment, charity will be violated.⁴ This will more readily be lawful in things of pleasure.

⁴ Those who doubt the very justice of an agreement of this kind, freely made, do not seem to deserve a hearing. For they could by no means prove any right of buyers to impede these associations.

N.B. That trading practice (*spéculation*) by which some persons buy up certain wares in great quantity at a low price, in order to keep them and sell them later when the price, as they hope, has increased,⁵ is not illicit *per se*, provided that the price corresponds to the supply of the things. Cf. Molina, disp. 345, no. 10; Cardinal de Lugo, disp. 26, nos. 176-179.

⁵ Aristotle already gives examples of practices of this kind, *Politics*, bk. 1, chap. 11.

c) To a certain kind of private monopoly must be referred many agreements and associations of merchants and artisans, which were not entirely unknown to the ancients, but which have become frequent from present-day practices of trading and, assuming various forms, have received different names in different regions. All of them, however, have this purpose: to break the force of free competition (*effets de la libre concurrence*). Indeed, businessmen today, with this purpose, not only agree among themselves that they will not sell wares or undertake work below a certain price, but also form associations so that they may hold the markets in their power and may wear down the other merchants or at least subject them to the necessity of obeying their laws. These forms of associations (*syndicats*) are called *consortium*, *kartell* (in Germany), *corner*, *combination*, *pool*, and especially *trust*, which American form is the most powerful of all.⁶

⁶ Concerning these, cf., for example, Cl. Jannet, *Le Capital, la Spéculation et la Finance au XIXe siècle*, chap. 8; and Conrad, *Handwörterbuch*, etc., s.v. *Kartelle*.

In order to judge agreements of this kind rightly, it is necessary to attend both to present circumstances—in which, because of the hostile contest of rivals, it comes about that by various devices, by depressing wages, and so forth, and especially by artificial prices which are ruinous to those who conduct business honestly, some are accustomed to overcome and oppress others—and to the end intended by the associates and to the things with which the agreement is concerned.

α) For if agreements of this kind are made among men of small means, by which they can both establish a suitable wage for workers and themselves receive an honest profit for the labor expended, there is no reason why we should disapprove these practices. Indeed, public administrations are already accustomed to define a certain minimum wage to be paid to workers by contractors, lest the contractors profit from the withholding of a just wage. Furthermore, if agreements of this kind do not concern things of necessary use, but things of pleasure—for example, music books—the price cannot be increased at the discretion of the sellers, since the buyers are free to decline harsher conditions.

β) But associations among great manufacturers and wealthy merchants are far more suspect. For then:

It can indeed happen that even these alliances, if they have this purpose—that an honest profit be obtained and the losses of excessive competition be warded off—are not without either cause or utility. Hence the *Kartelle* of Germany, in which there is rather the character of a certain defense, are not held in such ill repute.

But often it is not so much one's own defense as the oppression of others that is intended; or there is question merely of increasing profits and fortunes. Indeed, in certain parts of America some trusts have gone so far that they have even obtained political dominion in the state. Who does not see that these things greatly harm the commonwealth?

What of the fact that any agreements whatever concerning things necessary for subsistence are already accustomed to produce common inconvenience and detriment?

Therefore, formerly the laws most justly dealt severely with those who bought up all the goods. But if, perhaps, there was then a fault of excessive severity, today rulers rather abstain too much from checking ruinous practices. Already of themselves, however, these monopolies are opposed to charity, which, where there is question of common detriment, binds even with grave inconvenience.

As regards commutative justice, the solution already given concerning private monopoly returns. Without injury, a price cannot be exacted beyond the highest price which would otherwise be customary.

This norm, however, is not easy to use: both because those agreements of sellers often answer contrary agreements by which buyers attempt to buy wares at too low a price; and because that highest price seems capable of being defined apart from unbridled competition which depresses prices below that which can justly be exacted in the market where the things are sold. Nor is it always sufficiently clear which market is to be considered. Therefore, it will be useful to indicate more precisely the manner in which this norm seems to us to be applied.

That price is to be judged just which gives skilled businessmen only a moderate profit, or a recompense for their labor or industry. For in this manner the natural value which we shall see to inhere in human labor is merely sanctioned. The ancients already considered it lawful *per se* to ask a price from which, after expenses had been recovered, some suitable recompense would remain;⁷ and economists likewise judge this to be the natural price.

⁷ Cf. the documents collected by D. Brants in the work *Les théories économiques aux XIIIe et XIVe siècles*, chap. 6, § 4.

That price is to be presumed just which businessmen agree to exact when, after considering the supply of things which they jointly possess and the extent of the market, they do not enjoy a monopoly. For they would seem to wish in vain to introduce a price which was excessive.

In doubt, one should incline toward the justice of an agreement which has the character of some defense, as was said.

On the other hand, honest merchants must beware of alliances by which they do less to protect themselves than to attack (*syndicats d'aggression*) others, whether rivals or buyers. Then it will be especially useful to consider the price at which the things would otherwise have been estimated. To illustrate the matter by an example, suppose that certain wares, on account of special circumstances, have reached a very high price; and while, after the circumstances have changed, they are on the point of recovering their customary value, the merchants make an agreement with the purpose of retaining the unusual dearness. An alliance of this kind will scarcely be free from the stain of injustice.

This response, that the price which would prevail without a monopoly is to be considered, has for several centuries been held by theologians as most certain and must be retained entirely; nevertheless, its rationale does not appear so easy.

For they permit one who enjoys an inventor's privilege (*brevet d'invention*), or one to whom it happens by itself that he alone possesses an art or a useful thing, to increase the price on account of the natural or legal monopoly itself. And we have also taught above, universally, that things are to be

estimated according to scarcity. By what right is a different response given if, when a private monopoly has been introduced, art imitates nature and brings about a true scarcity of things? Can adapting the price to this scarcity be opposed to justice? These and similar arguments do not seem to us capable of being solved unless we reason from a higher principle.

Therefore, we argue as follows. The primary intention of nature, as we saw in no. 208, was and is that external things should yield to the common good of the human race. Nature therefore sanctions private ownership of things because it is a suitable means—indeed, in the present condition of things, the most suitable means—of procuring the common use of goods (no. 199). We have also seen that limits are placed upon the right of property by the primary intention of nature (no. 232).

Indeed, here also this intention of nature, this highest end of riches and property, must be invoked. While a natural monopoly does not concern necessary things, and while a legal monopoly is not without the social function of stimulating talents and the sciences, a monopoly artificially introduced has merely this purpose: that, without any common utility, a certain class of things be made rarer and thus be partly withdrawn from the uses of the human race. This manner of acting, which is directly contrary to the end of external things and of property, cannot be sanctioned by nature as a title to a higher price. Nature does not recognize monopoly as such, but property as it would be without monopoly. Therefore, the price of the thing must be established as though it were subject to no monopoly.

N.B. 1. There is another manner of violating justice if others are prohibited by threats or fraud from selling at a lower price.

2. By their agreement the contracting parties themselves are bound *per se*, so that, if they violate their promise to the detriment of others, they will be guilty of an injury to be repaired by restitution.

3. We shall treat below of agreements among workers, where we discuss the contract of hiring.

II. SCHOLIA

355. A moderation of the doctrine. Although the buyer's special utility cannot enter into the price properly so called, nevertheless, one to whom the acquisition of the thing is very beneficial can grant something beyond the price, whether from a grateful mind or from some other intention of beneficence. Indeed, St. Thomas, here, reply to obj. 3, judges that this is fitting. And you should observe that a gift of this kind can be alluring, so that the donor is impelled not so much by a benevolent mind as by the hope of attaining some intended object. Therefore, if, as sometimes happens, someone, in order to obtain more quickly or easily the money with which he hopes to conduct a profitable transaction, immediately offers, for example, extraordinary interest, this promise of his can be accepted without scruple. And, universally, he who, aware of the matter, willingly assents or spontaneously offers, seems *per se*, insofar as is necessary, to yield his own right.

356. Concerning the opinion of Bastiat.

This opinion, which denies that the natural utility of a thing can be compensated and judges that in exchanges services (*services*) rather than things are formally compared with one another,

a) **Is repugnant to common sense.** For men assign one true price to each thing, while the service furnished is different for one acquirer and another; and they judge that in agreements each

contracting party considers less what service he renders to the other than what advantage he himself obtains.

b) Is repugnant to the dignity of human service, which, having proceeded from benevolence, is repaid by a grateful mind, but not by payment of a thing from strict justice. For strict justice preserves for each person his own things and his own goods. Therefore, unless, together with the service, there is the cession of something proper to oneself, no debt properly so called will arise. But if the renunciation of something proper to oneself accompanies the service, and does so by the force of an onerous promise, this renunciation, and not the service, will be, reduplicatively, the title by which something can be exacted from justice.

c) Tacitly posits the value which is expressly denied. For the excellence of the service will depend very greatly upon the utility and value of the thing.

d) Has ruinous consequences. For it not only destroys the objective rationale of justice in contracts, since subjective conditions, and the very mind both of him who furnishes the service and of the other to whom it is furnished, must then be considered above all; but also, contrary to the mind of Bastiat, it favors the conclusion of the socialists. For they will readily show that something is exacted for the thing itself by the owner of the thing—for example, by the possessor of “capital”—and consequently that, by Bastiat’s admission, the present regime of private possession is vicious, and that a part of the price which from justice pertains to the workers is consumed by the wealthy.

Question IX: The Loan for Consumption and Usury

Aristotle, *Politics*, bk. 1, chaps. 10-11; St. Thomas, II-II, q. 78; *On Evil*, q. 13, vol. 2, art. 4; John Duns Scotus, commentary on IV *Sentences*, dist. 15, q. 2, nos. 17-20, 26; Molina, vol. 2, tract 2, disp. 299, 303 ff., especially 303, 304, 314-318; Lessius, *On Justice and Right*, chap. 20; Gregory of Valencia, *Theological Commentaries*, vol. 3, disp. 5, q. 21 (*On the Loan for Consumption and Usury*) and q. 25 (*On the Contract at 5 Percent*); Cardinal de Lugo, *On Justice and Right*, disp. 25; Pirhing, Reiffenstuel, and Schmalzgrueber, commentary on bk. 5 of the *Decretals*, tit. 19; Bossuet, *Traité de l'usure* [*Treatise on Usury*]; Broedersen, *On Licit and Illicit Usury*; Ballarini, *On Divine and Natural Right concerning Usury*; Scipione Maffei, *Dell'impiego del danaro* [*On the Employment of Money*]; Concina, *Commentary against Usury*; *The Usury of the Triple Contract Demonstrated by Historical-Theological Dissertations, with Two Appendices*; Benedict XIV, *On the Diocesan Synod*, bk. 10, chap. 4; Zech, *The Moderated Rigor of the Pontifical Doctrine concerning Usury Handed Down by Our Most Holy Lord Benedict XIV through an Encyclical Letter*, etc.; Leotardi, *A Singular Book on Usury and the Restraining of Usurious Contracts*; Mastrofini, *Le usure* [*Usury*]; Funk, *Recht und Moral in Bezug auf das Wirtschaftsleben* [*Right and Morality in Relation to Economic Life*]; Zins und Wucher im christlichen Alterthum [*Interest and Usury in Christian Antiquity*]; Scipio Maffei und das kirchliche Zinsverbot [*Scipio Maffei and the Ecclesiastical Prohibition of Interest*] (*Theologische Quartalschrift* [*Theological Quarterly*], Tübingen, 1869, 1875, 1879); *Geschichte des kirchlichen Zinsverbotes* [*History of the Ecclesiastical Prohibition of Interest*]; *Zur Geschichte des Wucherstreites* [*On the History of the Usury Controversy*]; C. d'Annibale, *Summula*, vol. 2, nos. 531-539; Lehmkuhl, *Moral Theology*, vol. 1, nos. 1090-1108; Ballerini-Palmieri, *Moral Work*, vol. 3, pt. 3, nos. 230-363; Endemann (a non-Catholic), *Studien in der Romanisch-Canonistischen Wirtschafts- und Rechtslehre* [*Studies in Roman-Canonical Economic and Legal Doctrine*], vol. 2, VIII, *Das Interesse* [*Interest*]; X, *Das Darlehen* [*The Loan*]; Weiss, *Sociale Frage* [*The Social Question*], vol. 2, pp. 594-719; H. Pesch, *Zinsgrund und Zinsgrenze* [*The Ground and Limit of Interest*] (*Katholische Zeitschrift* [*Catholic Journal*], Innsbruck, 1888); Brants, *Les Théories économiques aux XIIIe et XIVe siècles* [*Economic Theories in the Thirteenth and Fourteenth Centuries*], chap. 7; Cl. Jannet, *Le Capital, la Spéculation et la Finance au XIXe siècle* [*Capital, Speculation, and Finance in the Nineteenth Century*], chap. 3; Antoine, *Cours d'économie sociale* [*Course of Social Economy*], chap. 17, arts. 5-6; Gaggia, *Le usure nelle fonti del diritto canonico* [*Usury in the Sources of Canon Law*] (*Rivista internazionale di scienze sociali* [*International Review of Social Sciences*], 1897, p. 523 ff.; 1898, p. 39 ff.); Ch. Dehon, *L'usure au temps présent* [*Usury at the Present Time*] (pamphlet); Van Roey, *De iusto auctario* [*On a Just Increase*].

Article I. Initial Presentation of the Controversy

357. Reason for the order. It seems worthwhile, in preparing the argument which for several centuries has been involved in so many controversies, to range more broadly than usual. Therefore:

- a) We shall set forth the historical fortunes of the question, which seem to us often to have been considered and related with a mind insufficiently free;
- b) We shall explain the intrinsic notions by which a very great occasion of confusion may be cut away;

c) We shall briefly refute beforehand the opinions which we judge foreign to the truth, so that the approach to the true solution may be easy.

§ 1. Historical Notions

358. Concerning usury in Sacred Scripture. 1. It no longer seems possible seriously to doubt that there is no passage of Sacred Scripture which, taken *per se*, shows that lending at interest is illicit *per se* or universally. For:

a) **As regards the Old Testament**, even if it contained a universal prohibition, it would still be necessary to inquire into the title of that prohibition, since it could pertain equally well to positive law, abrogated by the new law, as to a declaration of immutable natural law. But all the passages which are adduced are conveniently understood in this way:

α) That they reprove biting usury by which the poor man is oppressed;

β) That they especially reprove it among the Jews themselves, who, as brothers, were joined to one another by a closer bond of charity.

To α). It suffices to place the most celebrated passages themselves before our eyes. *Exodus*, chap. 22, v. 25: "If you lend money to My people, to the poor man who dwells with you, you shall not press him as an exactor, nor oppress him with usuries" (Hebrew: "you shall not place a bite upon him"). — *Leviticus*, chap. 25, vv. 35-37: "If your brother has become poor and weak in hand, and you receive him as a stranger and a sojourner, and he lives with you, take no usury from him, nor more than you gave. Fear your God, so that your brother may be able to live with you. You shall not give him your money at usury, nor exact a surplus of fruits¹ from him." — *4 Kings*, chap. 4, v. 1, relates that the creditor was coming "to take the two sons [of the widow] . . . to serve him." — *Esdras*, bk. 2, chap. 5, v. 5 (concerning the effects of usury): "Behold, we subject our sons and our daughters to servitude, and some of our daughters are servants; nor have we the means by which they can be redeemed, and others possess our fields and our vineyards." — The practices of moneylenders are described by this imprecation of Psalm 108, v. 11: "Let the moneylender search all his substance." — *Ezekiel*, chap. 18, vv. 8, 13, 17, indeed praises him who "has not lent at usury," and condemns "him who gives at usury"; but both in v. 7 and in v. 12 he indicates that he is speaking of the devices by which they afflicted "the needy and the poor," and he likewise commands the restitution of the pledge received from the debtor. — *Amos*, chap. 8, v. 4: "Hear this, you who crush the poor."

¹ By this expression the Hebrew word *tharbith* is rendered, which is not employed except when placed beside usury. It therefore appears to signify a kind of usury in which not money but a portion of the fruits was given to the creditor.

From this, in their relation to these facts, it is readily known toward what end the few passages which appear more universal are directed. Psalm 14, v. 5: "Who shall rest upon Your holy mountain? . . . He who has not given his money at usury"; and *Ezekiel*, chap. 22, v. 12: "You have received usury and surplus, and avariciously calumniated your neighbors; and you have forgotten Me (O house of Israel), says the Lord God."

To β). Besides the passages already adduced from *Exodus*, *Leviticus*, and *Esdras*, the following especially pertain here: *Deuteronomy*, chap. 15, vv. 7-10, where the Lord wills that money be lent to a poor brother even when the seventh year, in which remission of the debt had to be made, is

approaching; in the same book, chap. 23, vv. 19-20: “You shall not lend at usury to your brother money, or fruits, or any other thing whatever, but to a foreigner”²; *Esdras*, bk. 2, chap. 5, v. 7: “Do each of you exact usuries from your brothers?”

² This permission to lend at interest to foreigners is sufficiently troublesome to many theologians. In order to extricate themselves, there were some who suspected that these words were not genuine and that the passage had been interpolated (Roman Rota, pt. 5, vol. 1, decision 301, no. 45); others fled for refuge to the supreme dominion of God, by which He can permit the usurpation of another’s property. This explanation is truly marvelous. And unless you say that a general power of despoiling foreigners was granted to the Jews, it is not apparent why this kind of injustice would have been honored by a special favor. Nor should you object to the faculty of divorce. For, besides the fact that dispensations of this kind cannot be multiplied without a compelling reason, there is this difference between the two species: that the absolute indissolubility of marriage, though consonant with the wishes of nature, nevertheless pertains to divine positive law, while the equality to be observed in contracts is among the chief precepts of nature. It will be said more rightly, in order to reconcile the passage with Catholic doctrine, that lending at interest was, on account of the special rationales of their polity, absolutely forbidden among the Jews, even if an extrinsic title were present, but was less absolutely forbidden if there was question of a foreign debtor, with whom they were joined by a less close bond of charity. Or, if you prefer, this passage contains a positive prohibition proper to that nation, but pronounces nothing concerning natural law. Rabbi Hermann Adler wrote concerning this passage in the article “Can Jews Be Patriots?” (*Nineteenth Century*, April 1878, p. 640).

b) As regards the New Testament, it contains nothing, not even in appearance. For in the passage of Luke, chap. 6, vv. 34-35, the Lord commends to us this love of enemies: that those benefits which others bestow only upon friends, and from a consideration of their own utility, should be shown by us even to enemies, without any hope of human repayment; and among these benefits is money lent to a person in need. Therefore, the words of the Lord “do not pertain to the present question of usury,” says C. d’Annibale, vol. 2, no. 533; “this is now known almost to the bleary-eyed and barbers.”

2. Whether, from the interpretation of the Fathers and the sense of the Church, greater force is to be assigned to these same passages, so that they demonstrate a universal prohibition of usury? Not a few authors (for example, Rev. Frs. Lehmkuhl and Weiss), following Benedict XIV,³ *On the Diocesan Synod*, bk. 10, chap. 4, no. 6, affirm this.

³ He writes thus: “The opinion of the Councils, the Fathers, and the Supreme Pontiffs was concordant, especially that of Urban III in chap. *Consuluit, On Usury*, who, by the authority of the aforesaid text (of St. Luke), pronounced every usury, however minimal, to be universally forbidden. . . . It is certain and indubitable that she [the Church] cannot err in interpreting divine Scripture and in disclosing its genuine sense to the faithful.” The rigid Concina did not fail to defend this severity with claw and beak.

By what right they say this, however, it seemed proper to us to investigate sincerely. After this inquiry we judge: **a)** that there is no consensus of the Fathers by which we are compelled to abandon the literal exposition of the texts; **b)** that no direct declaration of their sense is had from the laws of the Church, but that appeal is made only in general to the pages of both Testaments as confirming the severity of the sanctions, so that no definition of the authentic magisterium is had,⁴ except perhaps in favor of the sense which the texts prefer at first appearance. For it cannot be doubted that usury is in some manner disapproved by these passages.

⁴ It is known that even in an infallible document less exact reasons can be adduced, and that these are not clothed with the authority of the conclusion.

Moreover, these things will appear more clearly from what is to be said immediately.

359. Concerning usury among the Holy Fathers. 1. UNTIL THE FOURTH CENTURY, nothing else can be gathered from the Holy Fathers or ecclesiastical writers except that to exact interest from a poor or needy person was contrary to the precept of humanity and mercy. Nor do they affirm that a universal prohibition of usury is contained in the Scriptures. Let these principal passages be considered:

a) Apollonius (second century), in Eusebius, *Ecclesiastical History*, bk. 5, chap. 18 (Migne, P.G., vol. 2, cols. 478-479), wishes to show that the Montanists do not have true prophets:

“For since the Lord commanded: ‘Do not possess gold or silver, or two tunics,’ these persons, on the contrary, have gravely transgressed in the possession of forbidden things. For we shall show that those who are called prophets and martyrs by them collect money not only from the rich, but also from beggars, orphans, and widows. . . . Tell me, does a prophet dye his hair? Does he paint his eyes with antimony? Does he study to be adorned? Does a prophet play at the gaming board and with dice? Does he lend money at interest? Let them confess frankly and answer whether it is lawful to do these things or otherwise.”

b) Clement of Alexandria (second-third century), *Stromata*, bk. 2, chap. 18 (Migne, P.G., vol. 8, cols. 1023-1026), expressly commends the humanity of the old law from the precept of not lending at interest to one’s brother. For he has the following: “Although many things could be said concerning giving and sharing, it suffices to say this: that the law prohibits lending at interest to a brother . . . judging it inequitable that we should reap usury from money, but that with open hands and minds we should show favor to the needy. For God instituted this rationale of charity (Θεὸς γὰρ ὁ κτίστης τοιαῦδε χάριτος); and the liberal man already receives sufficient interest—those things which among men are most precious, most sweet, and most useful, namely, magnificence, praise, and glory. Does this not seem to you a precept of humanity, like this one: To render the poor man’s wage on the same day . . . ?”

c) Tertullian (160 to the third century), *Against Marcion*, bk. 4, chap. 17 (Migne, P.L., vol. 2, cols. 398-399). There he treats the general argument of the agreement between the Old and New Testaments (which Marcion referred to two different authors). Comparing the passage of Ezekiel (chap. 18, v. 8) with Luke, chap. 6, he judges that the prohibition of usury in the Old Testament prepared the more perfect law which would command a man to renounce even the principal (and thus he rightly takes the words of the Gospel, “hoping for nothing from it”). “It came first, therefore, that He uproot the fruit of interest, so that He might more readily accustom man, if perhaps it should occur, to the loss even of the loan itself, whose fruit he had learned to relinquish.”

d) St. Cyprian († 258). **α)** In the work *On the Lapsed*, chap. 6 (Migne, P.L., vol. 4, cols. 470-471), he describes the corrupt morals of Christians, which had to be purified by the fire of persecution. “Very many bishops,” he continues, “. . . having despised divine administration, become managers of secular affairs; having abandoned the episcopal chair and deserted the people, wandering through foreign provinces, hunt the markets of profitable trade; while their brethren in the Church are hungry, they wish to possess silver in abundance, seize estates by treacherous frauds, and increase the loan through multiplying usuries.” This reproof of the bishops, because they exacted devouring usuries from the poor, certainly contains no general condemnation of the matter.

β) In the book *Testimonies*, III, 48 (Migne, P.L., vol. 4, col. 759), under the title “One Must Not Lend at Interest,” he merely sets forth three passages of the Old Testament, one of which, that of Ezekiel, clearly treats of usury by which the poor man is oppressed.

2. IN THE FOURTH AND FIFTH CENTURIES, we encounter that condition of affairs in which the faithful, departing from their former fervor, by their morals and their avarice moved the Holy Fathers almost to desire a regime in which goods would have remained common, so that not a few passages had to be explained by us in which they seemed to favor a certain communism. This is already no slight indication that ecclesiastical writers then had regard more to the usuries of their own time, concerning which the poet Ausonius could write, “Swift usury slaughters the poor,” than to a universal definition of doctrine. Certainly, their words may not be accepted without a just moderation. Come, therefore; let us relate sincerely the principal passages from which we may then conclude justly.

A. The Greek Fathers.

a) **St. Basil** (331-379), *On a Part of Psalm XIV and against Moneylenders* (Migne, P.G., vol. 29, col. 263 ff.): “This sin,” he says in no. 1, “is censured in very many passages of Scripture. For Ezekiel reckons among the greatest evils the taking of interest and surplus.⁵ Indeed, the law also plainly prohibits it” (col. 266). — He then adds this rationale for the prohibition: “For in reality it is the very greatest inhumanity for him who lacks necessities to seek a loan for the support of life, while the other, not content with the principal, devises for himself income from the poor man’s calamities and gathers riches” (ibid.). — Then he describes the cunning and hardness of moneylenders, using those figures and comparisons which St. Ambrose will imitate in the book *On Tobit*, and he dissuades everyone, whether poor or wealthy, from seeking money by loan: “Listen,” he continues in no. 5, “you rich, to the counsel which we give the poor on account of your inhumanity. . . . If you obeyed the Lord, what need would there be for these words? But what is the Lord’s counsel (συμβουλή)? Lend to those from whom you do not hope for repayment. But how does He call that a loan to which no hope of repayment is joined? Understand the force of the statement, and you will marvel at the humanity of the legislator. When, for the sake of the Lord, you give to a poor man, you both give and lend at the same time: you give because you do not hope that you will receive anything; you lend because the Lord will repay magnificently on behalf of the poor man” (278). — Finally, at the end, directly assailing the moneylender: “You make profit from calamities; from tears you gather silver; you strangle the naked; you beat the hungry. . . . You plant without earth; you reap without sowing” (279).

⁵ Understand usury which is paid from the fruits of the field. Cf. *Leviticus*, chap. 25, vv. 35-37, and here, above, note 1 to no. 358.

b) **St. Gregory of Nyssa** (the brother and contemporary of St. Basil), in the oration *Against Usurers* (Migne, P.G., vol. 46, col. 434 ff.), with great force of words censures that false appearance of a benefit by which the poor man is destroyed: “From a helper you are turned into an enemy; for you do not bring aid . . . but sow evils for the afflicted man, stripping the naked” (col. 435). “Therefore, do not, under the appearance of humanity, live an inhuman life, nor be a physician who kills” (438). “Do not exact profit, but bestow a benefit without hope of gain” (439). — He rebukes the moneylender because he wishes to gather fruits not sown,⁶ seeking them from a poor man and from gold and bronze, “which are not accustomed to bear offspring” (442). — “From the poor man you exact a

return and an increase of your riches. You act in the same way as if someone wished to obtain a heap of wheat from a field dried up by the most burning heat, or a multitude of grapes from a vineyard after hail had fallen upon it, or the fruit of children from a barren womb, or the nourishment of milk from women who have not given birth” (442). — The moneylender’s money had no other use: “The moneylender grieves over silver laid up at home, because it is idle and unfruitful” (438). — “For this reason Sacred Scripture, which forms us for every piety, everywhere prohibits usury” (442-443). In the same place he teaches that in the Gospel we are admonished not to lend to those from whom we hope to receive, but to forgive the debt itself. — He describes the most sorrowful effects of the payment exacted: “How many have killed themselves by the noose on account of usury . . .” (447). — He judges a loan to be a kind of gift: “A loan is another species of donation” (451). — And thus he threatens the moneylender with the punishments of a man without mercy: “For he who does not give a loan and he who gives under the condition of usury are equally subject to punishment. The inhumanity of the former and the huckster’s gain of the latter are deservedly condemned” (451).

⁶ It is useful to transcribe this elegant allegory (col. 438): “He wishes all things to be produced for him without sowing and unplowed; his plow is the pen; his field, the paper; his seed, the ink; his rain, the time which augments the fruits of his money by hidden increases. The sickle is the demand for repayment; the threshing floor, the house in which he winnows the fortunes of the wretched.”

c) St. John Chrysostom (347-407). **α)** *On Genesis*, homily 41 (Migne, P.G., vol. 53, cols. 376-377), affirms that a universal prohibition against asking usury was made by the Lord, while the Jews were forbidden to ask it only from their brothers. — He adds the rationale for the prohibition: “For the debtor indeed is worn down by want, while the creditor, increasing his riches, heaps up for himself a multitude of sins” (col. 377).

β) *On Matthew*, homily 5, no. 5, at the end (Migne, vol. 57, cols. 61-62), inveighs against the usury of his own time: “For nothing—certainly nothing—is more shameful than present usury, nothing more cruel. For a moneylender of this kind traffics in the calamity of others.” — He rejects the excuse of profit ceasing: “But what do you ask, you will say? Whether I should give to another for use the money I have gathered, which is useful to me, without seeking any recompense from it? Far be it: I do not speak thus. . . . I wish you to receive heaven as interest for your gold.”

γ) *On Matthew*, homily 56 (otherwise 57), nos. 5-6 (Migne, vol. 57, cols. 556-558), opposes the cares which usury produces to the ease of mercy: “What is more difficult than lending at interest? . . . But to exercise mercy is easy and frees one from every anxiety. Therefore, let us not traffic in the calamities of others; let us not turn to profit those things which pertain to love of neighbor (φιλανθρωπία).” — He condemns the oppression of the poor through usury. “For a grave, certainly grave, and altogether curable disease has invaded the Church. Those who are prohibited from accumulating money even from just labors—indeed, who are commanded to open their treasures to the needy—grow rich from the poverty of others, devising a specious robbery and a well-colored avarice.” — “Do not,” he continues, “object to me the external laws; for the publican observes that external law and nevertheless suffers punishments.” — He says that this was prohibited in the Old Testament: “Do you not hear that it is prohibited even in the Old Testament?” — Indeed, he condemns it as injustice: “This is the bond of injustice; this is the noose (στραγγαλιά) of compelled agreements.” — He recommends other means of gaining: “Are there not many just kinds of business? Fields, flocks, herds, manual labors, and diligent care of household affairs? Why are you so mad as to reap thorns in vain?”

B. The Latin Fathers.

a) **Lactantius** († 340?), *Institutes*, bk. 6, chap. 18 (Migne, P.L., vol. 6, cols. 698-699), again posits a loan made to a poor man. He nevertheless expressly says that interest is a usurpation of another's property. "If [the just man] has lent any money, he will not receive usury, so that the benefit by which he relieves necessity may remain unimpaired, and that he may abstain altogether from another's property. For in this kind of duty he ought to be content with his own, although elsewhere he ought not even to spare his own property in order to do good; but to receive more than he gave is unjust. He who does this lies in wait, as it were, so that he may prey upon another's necessity." — And in the *Epitome of the Divine Institutes*, chap. 64 (Migne, P.L., vol. 6, col. 1076): "He will not steal, nor desire anything at all belonging to another; he will not give money at usury (for this is to seize profits from the evils of others), yet neither will he refuse if necessity compels someone to borrow."

b) **St. Hilary** (310?-366), commentary on Psalm XIV, no. 15, at the passage "He who has not given his money at usury" (Migne, P.L., vol. 9, col. 307), has the following: "For what is so intolerable as to bestow a benefit upon a needy man in such a way that he becomes more needy, and, while about to bring aid, to increase the poor man's misery? . . . If you are a Christian, why do you invest your idle money for income and make the need of your brother, for whom Christ died, your treasure? If you are a Christian, I do not ask you to give freely; at least demand the debt in such a way that you do not despoil; and remember that he from whom you demand usury is needy and poor, for whose sake Christ willed to be needy and poor." Therefore, he censures usury at the same time because it is a pseudo-benefit, because it is profit from a brother's necessity, because it is the spoliation of that brother, and because it is income from idle money. Whether, however, he understands these reasons taken collectively, as they say, or also each one separately, is not established.

c) **St. Ambrose** (340-397). α) *On Tobit* (Migne, P.L., vol. 14, col. 759 ff.), in which book he makes very great use of St. Basil, place cited, as his master and model. — He attacks truly ruinous usuries which pertain to those practices of despoiling others that he reproves in the book *On Naboth*. Hence the money of moneylenders is compared by him with serpents (chap. 12) and with the waves of the sea (chap. 5). "How many," he himself says in chap. 7, "have strangled themselves on account of interest? . . . Here is the shipwreck of all" (chap. 13, no. 44). "What is it to lend at interest? To kill a man," he says (Cicero) (chap. 14, no. 46). These usuries are at the rate of the hundredth, or twelve percent. Cf. chap. 9, no. 34; chap. 12, no. 42; chap. 14, no. 50. Through them the poor man is oppressed: "The poor man is fertile for your profit" (chap. 3, no. 11); on account of a loan granted for prodigal dissipations, the rich are reduced to poverty (chap. 5; for example, no. 19), and children are sold at auction (chap. 8). He presents the moneylender feigning friendship (chap. 3, no. 10), hunting for new heirs and unwary young men (chap. 6), or those devoted to gambling (chap. 7). — He calls the money which is furnished idle: "Let that which was idle for you [money] profit another" (chap. 2, no. 8); nevertheless, at the same time he does not deny the danger of losing the principal, but rejects this excuse (chap. 2, no. 8; chap. 3, no. 9; chap. 16, no. 54). — He condemns every form of usury, whether money or some other thing is to be furnished: "Food is usury, clothing is usury, and whatever is added to the principal is usury" (chap. 14, no. 49). — He uses certain words by which every interest-bearing loan is condemned: "The loan by which usuries are sought is evil" (chap. 2, no. 7). "Generally, this sentence of God (*Leviticus* 25:36) has excluded every increase of the principal" (thus chap. 15, no. 52. From the context of the discourse, however, he intends rather that usury

cannot be sought from anyone than that no usury, even moderate usury, can be sought.) — He posits that the loan is sought without a profitable use. For he turns everyone away from receiving a loan: “Are you rich? Do not take a loan. Are you poor? Do not take a loan. Are you rich? You suffer no necessity of seeking one. Are you poor? Consider the difficulty of repaying” (chap. 21, no. 82). — He argues from passages of the Old Testament (chaps. 14 and 15), but contends also that the precept concerning not retaining a pledge was universal (chap. 17). — Apart from the effects of ruin, he himself adds no argument of reason.

β) Letter 19, to Vigilius, chaps. 4-5 (Migne, vol. 16, cols. 983-984), among the instructions for performing well the episcopal office, admonishes him to take care to cut away the vice of usury, concerning which he writes the following: “If a Christian man has money, let him give it as though he were not going to receive it; or certainly as one going to receive the principal which he gave. . . . Otherwise, this is to deceive, not to give aid. . . . Peoples have often fallen because of interest, and it has been a cause of public ruin.”

d) **St. Jerome** (340?-420), commentary on *Ezekiel*, chap. 18, v. 5 ff. (Migne, P.L., vol. 25, cols. 176-177), shows this progress in the Law and the Gospel: “But see the progress: at the beginning of the Law, interest is taken away only from brothers; in the Prophet [Ezekiel], usury is prohibited from everyone. . . . Moreover, in the Gospel there is an increase of virtue, the Lord commanding: ‘Lend to those from whom you do not hope to receive.’” In the same manner he condemns both those who receive money and those who receive another thing as interest: “Some think that usury exists only in money. Foreseeing this, divine Scripture removes the surplus of every thing, so that you may not receive more than you gave.” To those who objected that the debtor had obtained fruit from the money received, he answers thus: “Let the merciful moneylender answer us briefly: did he give to one who had, or to one who did not have? If to one who had, he certainly ought not to have given; but he gave as though to one who did not have. Why, then, does he exact more as from one who has?” It therefore seems that he would have spoken otherwise if useful money had been lent to a rich man.

β) On *Amos*, chap. 8, v. 4 ff. (Migne, vol. 25, col. 1080), in explaining the prophet, he presents him rebuking the rich thus: “You who await the calends, in order that you may conduct business and augment usuries from usuries.”

e) **St. Augustine** (354-430). α) Letter 153, *To Macedonius*, no. 25, at the end (Migne, vol. 33, cols. 664-665), expressly regards usury as an art of slaughtering the poor man, similar to theft by which the rich are harmed, and as a cause of due restitution. “Is he more cruel who secretly takes something or snatches it from the rich man, than he who slaughters the poor man by interest? These things . . . are possessed wrongfully, and I would that they be restored; but there is no judge before whom they may be reclaimed.”

β) On Psalm 36, no. 6 (Migne, P.L., vol. 36, col. 386), he condemns the receipt of any thing above the amount given: “I do not wish you to be moneylenders, and I do not wish it because God does not will it. . . . If you have lent to a man at interest, that is, if you have given your money to him as a loan, from whom you expect to receive something more than you gave—not money alone, but something more than you gave, whether it be wheat, or wine, or oil, or any other thing whatever—if you expect to receive more than you gave, you are a moneylender, and in this you are to be condemned, not praised.” At the same time he seems to have biting usury in view. Otherwise, could he have written:

“And how detestable it is, how hateful, how execrable, I think that even the moneylenders themselves know”?

f) **St. Leo the Great** (end of the fourth century-461). α) Sermon XVII (otherwise XVI) (Migne, P.L., vol. 54, col. 181) inveighs with grave words against the loan at interest by which the poor man is oppressed, and condemns it as injustice: “Unjust and shameless avarice, which says that it is bestowing a benefit when it deceives . . . deservedly falls frequently into this, that for it the desire of unjust gain becomes the cause of a not unjust loss. . . . The iniquity of interest must be fled altogether; and gain which lacks all humanity must be avoided.”

β) Letter IV to the bishops established throughout Campania, etc. (Migne, vol. 54, col. 613), censures usuries even when a layman takes them: “Certain persons, seized by a desire for shameful gain, employ money at usury and wish to grow rich by interest. We grieve that this befalls, I will not say those who are established in clerical office, but even laymen who desire to be called Christians.”

g) **St. Maximus of Turin** (flourished in the middle of the fifth century), homily *Against Avarice* (Migne, vol. 57, cols. 476-477), describes the wicked effects of the usuries by which the poor are afflicted:

“Avarice is ashamed of the name of usury, and is not ashamed of the profit of usury. Therefore, the avaricious man always uses another’s property; he feeds himself upon another’s loss. Another’s want is prey for him; another’s weeping is joy for him, as we have always seen happen. How many lament things lost, over the seizure of which many others rejoice. . . . Tell me, O Christian: are you not pierced, are you not constrained, when you see the tears of others in your lodging?”

h) **Sidonius Apollinaris** (430-490?), Letter 24, *To Turnus* (Migne, P.L., vol. 58, cols. 528-531), relates that, in order to seek a delay in the name of a debtor afflicted by illness and debt, he approached the creditor; and that the latter, having become a cleric, kindly granted a delay and remitted the usuries. The creditor used these words: “Far be it from me, as a cleric, to reclaim from a sick man what I would scarcely have sought as a soldier from a healthy man”; and Sidonius himself says that he “loved both reputation and conscience,” because “he did not sell earthly benefits.” Hence he exhorts Turnus, the debtor’s son, to pay the debt without delay. Otherwise: “If whatever he had piously granted on account of mercy suffers delay, he justly reclaims it on account of the injury.”

3. CONCERNING THE LATER FATHERS, there is no reason for us to bring forward many testimonies. For already after the age of St. Gregory the Great, many judge that the patristic age must be concluded. Moreover, ecclesiastical writers themselves not rarely merely repeat statements made by the earlier writers, and the tradition of the Church can appear to us more clearly from the Councils of bishops. We shall therefore be content with these:

a) **St. Gregory of Tours** (538-593 or 594), *History of the Franks*, bk. 3, no. 34 (Migne, P.L., vol. 71, cols. 266-267), relates the deed of a bishop who asked the king for money to be lent to citizens who were engaged in business. Of his own accord he promised: “We shall return your money with lawful usuries.” The citizens in fact came by this means to a better fortune. The king generously refused the money offered by the bishop. This entire manner of acting is related by St. Gregory without any reproof.

b) Procopius of Gaza (465-528), commentary on *Leviticus* 25:35 (Migne, P.G., vol. 87, col. 787), says: “From these words it is evident that lending at interest and usury arise from impiety and drive away all humanity. God, however, did not command that they exercise that beneficence toward foreign nations. . . . But now humanity and beneficence must be shown toward all.”

c) St. Gregory the Great (540-604), *Letters*, bk. 9, letter 38, *To Anthemius* (Migne, P.L., vol. 77, cols. 972-973), relates without disapproval a contract by which someone promised another, from whom he was receiving merchandise, to pay something “of the price for the sake of profit.” When the business turned out otherwise, St. Gregory wishes Anthemius to approach the seller, whom he calls “our magnificent son,” so that he, “as befits a Christian and a noble man, being more benign than rigid,” may, out of mercy, “be content with the principal of the price received.” These words indicate some usury; the agreement, however, can be regarded as a kind of partnership rather than as mere lending at interest.

d) St. John Damascene († 750), *Sacred Parallels*, tit. IX (Migne, P.G., vol. 95, cols. 1363-1366), merely gathers texts from both Testaments concerning usuries, and then presents in an abridgment the homily of St. Basil, indicated above, against moneylenders, whose doctrine he thereby tacitly approves.

e) Rabanus Maurus († 856), archbishop of Mainz, commentary on *Ecclesiasticus*, bk. 7, chap. 10 (Migne, P.L., vol. 109, cols. 973-974), speaking of *faenus* (he understands a loan for consumption), wills that, out of mercy and with the danger of losing the money disregarded, a loan be furnished to a needy neighbor, and indeed in such a way that he is not afflicted by the taking of a pledge; at the same time he commands that the money received be returned. Concerning usuries, nothing.

The same author had earlier, in *Expositions on Leviticus*, bk. 7, chap. 7 (Migne, P.L., vol. 108, col. 543), related a passage from Hesychius, where he says: “The letter of Leviticus exacts aid for the poor man.”

f) St. Ivo († 1117), bishop of Chartres in France, in pt. 13 of the *Decree* (Migne, P.L., vol. 161, cols. 805-806), gathers canons and laws concerning usurers and moneylenders. There, after the chapters by which clerics are prohibited from every lending at interest, chaps. 19 and 20 are placed, taken from the *Code* and the *Capitularies*, by which all are prohibited from practicing “wicked interest” and exacting usuries upon usuries.

g) St. Bruno of Asti, who was bishop of Segni († 1125). **α)** On *Leviticus* 25 (Migne, P.L., vol. 164, col. 459), he laments that the poor are harassed by Christians “with importunate interest”: “We have often seen the whole substance of the poor suddenly devoured by a small sum of money lent.”

β) On *Deuteronomy* 23 (Migne, vol. 164, col. 528): “You shall not lend to your brother at usury. . . . These words are full of piety and love, by which we are admonished that we aid without usury those whom we ought to love as being of our own race and of the same religion. Hence moneylenders are condemned no less in the New Testament than in the Old.”

With all these things accurately weighed, the following seem to us capable of being established invincibly concerning the force and authority of the Fathers in this matter:

a) There is no consensus of the Fathers by which we are compelled, in interpreting the passages of the Scriptures, to abandon the obvious sense, or that which is gathered *per se*. For: **α)** As regards the

Old Testament, different authors give different force to the passages; several (Clement of Alexandria, St. John Chrysostom, and, as regards *Leviticus*, St. Jerome) understand that the prohibition was circumscribed to brothers; and these passages, which thus retain their proper signification, are referred by them to the precepts of humanity and mercy rather than to those of justice. β) As regards the New Testament, not a few already took the words of the Lord in the manner which pleases modern interpreters. Thus Tertullian, St. Basil, St. Gregory of Nyssa, and St. Jerome.

b) With perhaps one or another exception, they do not clearly accuse lending at interest of injustice.

c) Nor do they ever directly consider the case in which someone asks a moderate usury. For the passages which are brought forward by some authors do not regard the quantity of the interest, but its form, whether open (in money) or disguised (in merchandise). Cf. the cited passages of St. Ambrose, St. Augustine, and St. Jerome.

d) Nor would most of them have spoken rightly if they were to be understood concerning the prohibition of moderate usury as unjust. For no theologian denies that, consistently with justice, moderate usuries can be exacted even from a poor man to compensate for the danger of losing the principal. Yet the excuse from danger is rejected by the Fathers. They themselves, however, acknowledge the danger of losing the principal; and it can scarcely be absent where the needy are concerned.

e) But the usuries in whose reprobation the Holy Fathers agree, appealing to Scripture, and which some—for example, Lactantius and St. John Chrysostom—even accuse of injustice, are the inhuman usuries by which the poor were destroyed and an appearance of benefit covered the greatest cruelty.

f) This false appearance of a benefit is their chief argument. Scarcely anyone among them brings forward a more universal rationale.

360. Concerning usury in canonical laws and among the Scholastic doctors or the classical interpreters of canon law.

The matter seems to us capable of being proposed precisely thus.

1. UNTIL THE NINTH CENTURY, by very many decrees of Councils, chiefly particular Councils, and not rarely under severe sanctions, clerics alone were prohibited from practicing usuries and taking what was called shameful gain. Nor, in the Greek Church, did this discipline become more severe, so that the Quinisext Council (692), canon XI, merely repeated the words of canon 44 of those called apostolic, which is to be cited immediately.

Canon 20 of the Council of Elvira (in Baetica) must be excepted from their number; in the year 305 or 306, it commands that the obstinate layman “who shall have persisted in that iniquity be cast out of the Church” (Mansi, vol. 2, col. 9). But Scipione Maffei, work cited, p. 123, regards this reading as suspect; and in fact neither Ivo, *Decree*, XIII, 12; *Panormia*, III, 156 (Migne, P.L., vol. 161, cols. 805, 1167); nor Gratian, chap. *Si quis*, 5, dist. XLVII, reports that latter part of the canon, but only the former part, which restrains clerics by degradation.

Thus, as regards clerics, already among the canons which are called apostolic, canon 44⁷ establishes thus: “Let a bishop or deacon exacting usuries from debtors either cease, or certainly be condemned.” Then the Council of Arles, at which, in the year 314, the whole Western Church assembled, has the following: “Concerning ministers who lend at interest, it has pleased us that they be made to abstain

according to the form divinely given” (Mansi, vol. 2, col. 472). We shall furthermore give canon 17 of the First Council of Nicaea (325): “Since many who are established under the rule pursue avarice and shameful gains . . . giving a loan, they exact hundredths: the holy and great Synod has justly decreed that, if anyone be found after this definition receiving usuries, or making some contrivance or transacting business in any manner whatever, or exacting *hemiolia*, that is, one and a half,⁸ or devising any such thing whatsoever for the sake of shameful gain, he be cast down from the clergy and be made foreign to the rule” (Mansi, vol. 2, col. 615).

⁷ Hefele, *Conciliengeschichte*, vol. 1, p. 788 (1st ed.), reports from Drey that this canon, of unknown origin, is among the most ancient. In the article *Ueber den Rigorismus* (*Quartalschrift*, Tübingen, 1841, p. 413), however, he regards it as later than St. Cyprian; but Rev. Dr. Funk, *Zins und Wucher* (*Tübinger Quartalschrift*, 1875, p. 224), assigns it to the middle of the fourth century.

⁸ A kind of sesquialteral usury, permitted by the law of Constantine, by which someone, for ten measures of grain given, for example, in winter, received fifteen at harvest. This usury is often mentioned by the Fathers together with hundredths (12 percent).

2. IN THE MIDDLE AGES, a) the usuries which the African Council (First Council of Carthage, year 345), canon XII (Mansi, vol. 3, col. 149), and the Council of Aachen in the year 789, canon 32 (Mansi, vol. 13, appendix, col. 165), had already declared worthy of reproof even in laymen, were entirely prohibited.

In the acts of the Council of Calchuth (in England, 787-788), the bishops say universally: “We have also prohibited usuries”; and the Council of Meaux (845), canon 55, more expressly commands the bishops that they “restrain all Christians from usuries, and pronounce a canonical sentence against those whom they cannot restrain otherwise” (Mansi, vol. 14, col. 831).

The matter becomes more manifest from the *Corpus of Canon Law*. **α)** These statements of Gratian, under question 3 of Cause XIV, at the beginning: “That to pursue gains beyond the principal is to exact usuries . . . is proved”; and under canon 4: “Behold, it is shown clearly that whatever is exacted beyond the principal is usury”; and under question 4 of the same Cause, at the beginning: “That neither clerics nor laymen are permitted to exact usuries . . . is proved,” show that the author of the *Decree* was persuaded that every usury in any person whatever is illicit. **β)** Moreover, in book 5, title 19, of the *Decretals*, the decretals of Alexander III (1159-1181) and Urban III (1185-1187) openly reprove the request or receipt of usuries, whoever may have been their author, as contrary to the pages of both Testaments; and they command the restitution of that shameful gain. Cf., for example, chaps. 2, 5, 7, 9, 10, 13. Indeed, in chap. *Super eo*, 4, Alexander III denies that he can dispense in this matter.

b) Then, in the general Councils themselves, the Third Lateran Council (1179) and the Second Council of Lyons (1274), usurers were assailed, that is, those for whom the exaction of usuries was like a trade and a customary manner of life.

“Because,” says the Third Lateran Council, canon 25 (Hardouin, vol. 7, col. 1683), “in nearly all places so great a (crime?) of usury has become established that many, other occupations having been set aside, practice usuries as though licitly, and do not attend to how they are condemned by the pages of both Testaments,” it therefore deprives manifest usurers of communion and ecclesiastical burial, and prohibits the receipt of their offerings. These sanctions were confirmed by constitution 26 of Gregory X in the Second Council of Lyons, where the Fathers, in canon 26, “desiring to restrain

the abyss of usuries, which devours souls and exhausts resources,” at the same time prohibit the renting of houses to foreigners who wish to lease them for practicing usuries (Mansi, vol. 24, col. 99).

The plague nevertheless raging, in the Council of Vienne (1311) it was necessary to condemn the administrations of places which, by their statutes, sometimes confirmed by oath, approved the exaction of usuries. Going still farther, the Council added a certain doctrinal declaration in these words: “Indeed, if anyone shall have fallen into that error, so that he presumes pertinaciously to affirm that to practice usuries⁹ is not a sin, we decree that he be punished as a heretic.” Chap. *Ex gravi*, sole chapter, *Clementines*, *On Usury* (V, 5).

⁹ Observe that these words do not apply to individual agreements concerning interest to be paid, but require some habit; nor, moreover, is it defined whether the practice of usuries (*la pratique de l'usure*) is reproved by natural or positive law, or as unjust or as contrary to charity. At that time, however, there was a manifold cause for condemning it.

c) At the same time it was necessary to restrain the devices and frauds which were committed against the laws even by clerics, and to repress disguised usuries. Cf., for example, bk. 5 of the *Decretals*, tit. 19, chaps. 1, 2, 6, and many things in Gaggia, article cited.

Worthy of note are the words by which Sixtus V, in the constitution *Detestabilis avaritiae*, condemning a certain kind of partnerships tainted with the stain of usury, describes this plague: “The abyss of usuries,” he says, “hateful to God and men, condemned by the sacred canons, and contrary to Christian charity” (*Bullarium*, pt. 4, vol. 4, p. 263).

3. For a sufficiently long time it was in some manner granted to the Jews that they might practice profitable lending at interest.

This tolerance, however, or impunity in the external forum, which does not imply approval,¹⁰ was denied to them by Urban III (1185-1187), chap. 12, *Decretals*, *On Usury* (V, 19), and by King St. Louis, no. 23 among the *Statutes of St. Louis* reread at the Council of Béziers in the year 1255 (Mansi, vol. 23, col. 882). The words of the Fourth Lateran Council (1215), canon 67, restrain them only from grave and immoderate usuries (Mansi, vol. 22, cols. 1055-1056); the gloss, however (on chap. 18, *Decretals*, V, 19, at the word *immoderatasve*), and the interpreters of the law were unwilling, from the contrary sense, to concede moderate usuries to them.¹¹ Besides, whether they acquiesced in such things may be doubted. However this law is to be interpreted, the Jews did not therefore cease from asking usuries, and certain somewhat more recent indults permitted them even no slight lending at interest. Rev. Gaggia, article cited, pt. 2, p. 45, affirms that the Jews were nevertheless finally comprehended even by the common law.

¹⁰ Cf. Schmalzgrueber, place cited, nos. 17-18.

¹¹ Rev. Gaggia, article cited, p. 536, note, records that their usuries were, according to the regions, 40-90 percent, 86 percent, and 100-180 percent. Scipione Maffei, p. 140, reports a brief of Gregory XIII (1572-1575), defining their maximum exaction at 18 percent.

4. a) In the canonical laws themselves, formal mention is not made of any moderate lending at interest, such as today openly comes into common use. On the contrary, the monuments of that time and the very tenor of the decrees show that biting usuries, by which the poor were afflicted, were then before their eyes.

The hundredth payable each month can be regarded as the minimum usury (12 percent. Cf. Hefele, *Conciliengeschichte*, vol. 1, p. 406, 1st ed.). Rev. Gaggia, p. 527, records lending at 23, 25, 37, and 40 percent in the fourteenth century. The cited decrees of the Councils of Nicaea, Lateran III and IV, and Lyons II reveal grave usuries.

Nor do these laws openly declare that every usury is opposed to justice. Scarcely any indication is had even of an extrinsic title, as, for example, chap. *Naviganti*, 19, *Decretals, On Usury* (bk. 5, tit. 19).¹²

¹² The genuine reading seems to require that the first sentence of that chapter be posited as denying rather than affirming. Otherwise, the solution is difficult and scarcely coheres with what follows.

b) But the Scholastic theologians and canonists perfected these rationales; and, inquiring into the motives and modes, they soon handed down with common voice: α) That it is *per se* repugnant to the nature of a loan for consumption that it be the cause of exacting interest; β) that, therefore, by this title any usury whatever is opposed to justice; γ) that there are nevertheless titles extrinsic to the loan for consumption on account of which it is permitted to stipulate more than what was given; δ) and that, moreover, there are other contracts—I mean the rent contract (*census*) and partnership—by which someone can make a just profit from his money.

Already in St. Thomas every rationale of usuries which are asked on account of the loan for consumption itself is condemned as injustice, and he deduces this without difficulty from the principles of equality to be preserved. Nor does the Subtle Doctor dissent, so that we have the consensus of both schools. The classical theologians of the Society of Jesus, such as Molina, Lessius, and Cardinal de Lugo, places cited, afterward assent to these. The latter, however, in no. 9, admits that the matter is subject to difficulties and is not gathered clearly from the Scriptures.

Among the canonists, the matter is no less agreed. But although already in St. Raymond, *Summa*, bk. 2, tit. 7, there occurs that definition of usury which embraces every interest,¹³ they did not thus immediately discover the argument for its dishonesty. Thus Innocent IV († 1254), *Apparatus on the Five Books of the Decretals*, on bk. 5, tit. 19, exposition of the rubric, after he has said that usuries are condemned by both Testaments, argues from the infinite evils which permission to lend at interest would bring; but he adds: “Some also say that usury was prohibited more because it would be contrary to the charity and piety by which I am bound to aid my neighbor than on account of the evils which follow.” Henry of Susa, called Hostiensis († 1271), in the *Summa aurea*, under the same title, defines usury even more precisely than St. Raymond: “Whatever is added to the payment of the thing loaned on account of the use of the thing itself, an agreement having been interposed, or this intention having been held in the contract, or an exaction having been made afterward.” He brings forward these rationales why it is illicit: that a loan for consumption contains a transfer of ownership, and that there is no use of the thing distinct from its consumption. Abbas Panormitanus († 1453), *Reading on the Decretals*, under the rubric of the same title, having related the rationale of Innocent IV, judges that he argues better from the fact that lending at interest is contrary to the nature of things. The interpreters of the law therefore began to use rationales similar to those of the theologians. Cf. Pirhing, Reiffenstuel, and Schmalzgrueber, places cited.

¹³ “Usury is profit owed or exacted by agreement from a loan for consumption.” He himself says that usuries are prohibited by natural law.

c) Benedict XIV approved this doctrine of the school in the celebrated encyclical *Vix pervenit* (November 1, 1745), in which, having first assembled a gathering of theologians, he set forth and defined with the greatest care the points to be held in this matter. The occasion for writing, however, was the controversies which had arisen over a contract of loan for consumption with a stipulation of 4 percent interest, entered into around the year 1740 by the city of Verona; and, by name, as it seems, the study of Scipione Maffei, which he had dedicated to the Pontiff on account of the bond of friendship by which he was joined to him. Nevertheless, the Holy Pontiff declares that he condemns no particular contract, and he reproves no one, but proposes the matters dogmatically. Observe, however, that those letters were sent only to the bishops of Italy. Indeed, long afterward, on July 29, 1836, the Holy Office, with the approval of Gregory XVI, seems to have declared incidentally that those letters regarded the universal Church.¹⁴ Yet those letters could not thereby become an infallible definition. Therefore, we judge that they possess very grave authority, but not the supreme authority.

¹⁴ This declaration, mentioned in Lehmkühl, vol. 1, no. 1093, note, is found in the second Spanish edition of Gury-Ballerini's *Moral Theology*, I, 849, note, and is as follows: "Wednesday, July 29, 1836, in the general congregation of the Sacred Roman and Universal Inquisition, held in the convent of Santa Maria sopra Minerva before the Most Eminent and Most Reverend Cardinals, General Inquisitors against heretical depravity, the doubt having been proposed, the same Most Eminent and Most Reverend Lords said: 'The petitioner shall conduct himself according to the doctrine contained in Benedict XIV's encyclical *Vix pervenit*, which regards the universal Church.'" But, besides the fact that the final sentence can *per se* be referred equally to the doctrine contained and to the encyclical, it is already evident that no excessive force should be attributed to this rescript from the fact that it was omitted in the instruction in which, in the year 1873, the Sacred Congregation for the Propagation of the Faith wished to collect all the resolutions of the Sacred Congregations concerning profit from a loan for consumption, together with the encyclical *Vix pervenit*, for the use of bishops and apostolic vicars and prefects. Cf. *Collectanea of the Propagation of the Faith*, no. 2140.

The doctrine, moreover, is contained in five points. "I. That kind of sin which is called usury, and which has its proper seat and place in the contract of loan for consumption, is situated in this: that someone, from the loan for consumption itself, which by its own nature asks only that as much be returned as was received, wills that more be returned to him than was received; and therefore contends that some profit beyond the principal is owed to him by reason of the loan for consumption itself. Every profit of this kind, therefore, which exceeds the principal, is illicit and usurious.

"II. Nor indeed, for purging this stain, can any aid be summoned, either from the fact that this profit is not excessive and too great, but moderate; not great, but slight; or from the fact that he from whom that profit is demanded solely on account of the loan for consumption is not poor, but rich; and is not going to leave the sum lent to him idle, but is going to expend it most usefully for enlarging his fortune, either by purchasing new estates or by conducting profitable business. For whoever, once that equality has been posited, does not yet fear to exact something more from anyone by force of the loan for consumption itself, to which satisfaction has already been made by an equal amount, is proved to act against the law of the loan for consumption, which necessarily consists in the equality of the thing given and the thing returned. Consequently, if he has received it, he will be bound to restitution from the obligation of that justice which they call commutative, and to which it belongs both sacredly to preserve the equality proper to each human contract and exactly to repair it when it has not been preserved."

III and IV. In these points it is conceded that compensations under some extrinsic title can justly be sought, and that there are very often at hand other just modes of employing money fruitfully through

contracts of a nature entirely different from a loan for consumption. Therefore, Catholic doctrine is in no way an obstacle to the prosperity of commerce.

V. There it is denied that an occasion of this kind for making a just profit from money is always at hand, so that in practice it would always be permitted to receive a moderate increase. “If anyone should think thus, he will without doubt oppose not only the divine documents and the judgment of the Catholic Church concerning usury, but even common human sense itself and natural reason.” Reasons are added: both because we are often bound to aid our neighbor by a simple loan for consumption, and because often “apart from the one loan for consumption, there can be room for no other true and just contract.”

At the same time, the condemned propositions which pertain here must be reported.

I. Alexander VII, on March 18, 1666, among the propositions condemned and prohibited at least as scandalous, presents this one as no. 42: “It is licit for one who lends to exact something beyond the principal if he binds himself not to demand back the principal until a certain time.”

II. Innocent XI, among the 65 propositions which were similarly reproved and condemned by him on March 2, 1679, “at least as scandalous and pernicious in practice,” has two concerning our matter:

a) No. 41: “Since ready money is to be valued more highly than money to be paid, and there is no one who does not value present money more highly than future money, the creditor can exact something beyond the principal from the borrower, and under that title be excused from usury”;

b) No. 42: “It is not usury when something beyond the principal is exacted as owed from benevolence and gratitude, but only if it is exacted as owed from justice.”

5. THE Milder DISCIPLINE. a) It was prepared by a) The institution

of the Mounts of Piety (*Montes Pietatis*),¹⁵ which arose in Italy in the fifteenth century to aid the poor, oppressed by the exactions of the Jews, by giving money as a loan against a pledge received. They soon began to ask some small interest to compensate for labor and the other expenses; afterward also, the Mixed Mounts (*Montes mixti*) did so in order more easily to gather money which could then be lent to the poor.

¹⁵ Zech, *Moderated Rigor*, etc., in dissertation II, wrote many things concerning this argument which it is useful to know. He judges that the Mounts were so called from the mass of money or provisions gathered there for the use of the poor, and defines them: “A sum of money or of other things consumable by use, collected for the aid of the poor so that it may be lent to them under pledge” (§§ 260-261); and he rightly notes that the practice of gathering masses must be traced back to ancient times. Hefele-Hergenröther, *Conciliengeschichte*, vol. 8, p. 545, speaks precisely concerning the Mounts. Cf. also Besse, *Le Bienheureux Bernardin de Feltre [Blessed Bernardino of Feltre]*, vol. 2.

This request for interest was the origin of an acute controversy even among religious Orders. The religious of St. Francis, especially those then called of the Observance, led the ranks of the defenders, who prevailed in the cause, so that by the constitution *Inter multiplices* of the Fifth Lateran Council (1512-1517), those Mounts in which merely compensation for expenses was exacted were solemnly approved. That title for exacting an increase was indeed foreign to lending at interest strictly so called, but at the same time it presented an image of moderate interest. More, as is evident, was disputed concerning the Mixed Mounts, which some reproved, while others attempted to excuse them by various rationales, especially when the common use of depositing money fruitfully in this way in the Mounts had become established in Italy. (Cf. Zech, no. 339 ff.)

β) Various purchases of rent contracts (*census*), which at first appearance seemed similar to lending at interest and made the fruitful use of money more frequent.

γ) Civil statutes or customs which in various places granted to all the exaction of moderate interest.

Thus, already in the sixteenth century, a custom¹⁶ of tolerating the demand of 5 percent is acknowledged in Germany. (Zech, § 248.) Certainly, not all agreed concerning its force and efficacy. Zech, § 252, explains it thus: that these usuries are owed only after delay and from the presumption of an extrinsic title. But Pichler, S.J. (1670-1750), who obtained for himself the highest praise in interpreting canon law, had already attributed a more universal force to law or custom, so that, from a public cause, it could render moderate lending at interest licit. For: “Lucrative usury is prohibited by natural and divine law conditionally and when fraud or avarice or cruelty intervenes; likewise when the usury is excessive, or biting, as it is called, or excessively burdensome with the oppression of one’s neighbor . . . but not absolutely, and when fraud, avarice, oppression of one’s neighbor, and injury to charity are absent, and moderate usury is exacted according to the statutes and customs of places.” Thus he himself, on bk. 5 of the *Decretals*, tit. 19, no. 11. Pasqualigo († 1664) of the Theatine Order had preceded him and had conceded a similar faculty to the Supreme Pontiff in *Moral Decisions*, 183.

¹⁶ Concerning this custom and the controversies joined with it, it is quite useful to read the recent study of Rev. Fr. Duhr, S.J., which he published in the Innsbruck periodical *Zeitschrift für katholische Theologie*, 1900, pp. 209-248, under the title *Die deutschen Jesuiten im Fünfpercent-Streit des 16 Jahrhunderts* [*The German Jesuits in the Five-Percent Controversy of the Sixteenth Century*]. He connects the beginnings of the practice of lending at 5 percent with the growth of business for which the discovery of America provided the occasion; and he learnedly explains, together with the anxieties of confessors—who, as though compelled, began to respond more mildly while the more severe discipline was retained in the schools—the excuses sought by penitents, the questions asked, the ambiguous responses: in brief, all the customary confusion and disturbance of affairs in transition. In the third General Congregation of the Society of Jesus itself, held in 1573, a special examination of this moral question was made; and from the fourth, in the year 1581, there issued the *Treatise concerning the Contract of Five Percent, Composed by Common Consent of the Fathers Appointed for This, in the Month of April 1581*. Rev. Fr. Duhr says that the fruit of these controversies was the exposition concerning the loan for consumption and suspect contracts made by Gregory of Valencia in volume 3 of his *Scholastic Theology*.

δ) The very growth of business and commerce.

Already Lessius, chap. 20, nos. 123-127, permitted any merchant, even one for whom no profit ceased therefrom, to exact a price for the obligation of being without money for a certain time. For among merchants that burden is *per se* capable of valuation at a price.

b) It is formally contained in several declarations, both of the Sacred Penitentiary and of the Holy Office with the approval of the Supreme Pontiff, which were issued beginning in the year 1830. In these, without regard to a special extrinsic title, or even to civil law, it is declared that the faithful, even ecclesiastics and religious, who have lent money at moderate interest are not to be disturbed, provided that they are prepared to abide by the mandates of the Holy See. The Holy See, however, was unwilling to define its just amount universally.

Those responses are found either in the *Collectio Lacensis*, vol. 6, appendix to the Synod of Pondicherry, col. 677; or in the *Collectanea of the Propagation of the Faith*, no. 2140 ff.; or in the *Enchiridion* of Rev. Fr. Bucceroni. Observe, for example, the response of the Holy Office to the Bishop of Rennes, August 18, 1830, together with the response of the Holy Office to the Bishop of Viviers,

who wondered that no mention had been made of the title of civil law in the rescript described above (that response, August 31, 1831, is found in Gury-Ballerini, vol. 1, no. 878, or Lehmkuhl, vol. 1, no. 1103, note 1); then the responses of the Sacred Penitentiary of February 11, 1832, and of the Holy Office of January 17, 1838, March 26, 1840, and February 28, 1871.

361. Concerning usury in civil laws. 1. Greek and Roman laws permitted usuries.

Concerning the gravity of usuries among the Greeks, cf., for example, Maffei, p. 76 ff. Among the Romans (cf. Maffei, p. 91 ff.), the law of the Twelve Tables decreed: "Let no one practice lending at more than the unciarian rate," and a lawful rate was established by several laws. By a plebiscite, all interest was abolished; afterward it was restored, and in Roman law until Justinian (who imposed a greater limit) the (monthly) hundredth usuries were permitted (they were called bloodstained, for they equal 12 percent). Nevertheless, a loan for consumption in Roman law did not by its nature admit payment, but an interest-bearing loan was contracted by an added stipulation.

2. Christian laws were for a long time accommodated to canonical norms. We have seen, however, that in Germany there had already long been a departure from the ancient severity, and usuries were tolerated or even permitted either without limit or within certain limits. In France, on the contrary, the matter was treated more severely than in Italy itself, and lending at interest was prohibited by law until the decree of October 3-12, 1789.

3. In our laws, a loan for consumption is still regarded as gratuitous *per se*, so that a positive stipulation of interest is required.

For a long time, however (from the French law of September 3, 1807), the parties could not exceed the legal rate, namely, 5 percent in "civil" matters and 6 percent in commercial matters. But in France, by the law of January 13, 1886, the restrictions in commercial cases were removed; while in Belgium, by the law of May 5, 1865, the parties can agree freely (whatever the cause may have been) concerning usuries beyond the legal rate, which by the law of December 20, 1890, is 4½ percent in civil matters and 5½ percent in commercial matters. Nevertheless, article 494 of the Belgian Penal Code punishes the wicked custom of abusing the passions and weakness of the borrower in exacting interest.

According to the recent code of Germany: **a)** the gratuitousness of the loan for consumption is retained insofar as usuries are not owed unless from an added stipulation (art. 608); **b)** lawful interest is *per se* 4 percent; **c)** if the stipulation was for interest greater than 6 percent, it is open to the debtor, after six months have elapsed, to give notice of the repayment of the principal after six months; nor can that faculty of freeing himself in this manner from paying such great usuries be removed by a contrary agreement. This rule, however, does not regard debts payable to bearer (*au porteur*). **d)** With the exception of certain banking institutions, an agreement made in advance for renewed interest (*anatocisme* [compound interest]) is invalid. Cf. arts. 246-248.

But today there is dispute in various directions concerning the very usefulness of laws which define the maximum interest and concerning the mode of restraining excessive usuries. Cf., for example, V. Brants, *L'usure*

dans la législation contemporaine [Usury in Contemporary Legislation] (*Bulletins de l'Académie royale de Belgique*, 3rd series, vol. 30, no. 12, 1895).

362. Concerning usury according to the opinions of the doctors. 1. The ancient wise men gave little approval to usuries.

Thus Plato (*Laws*, V, 742); Aristotle (*Politics*, I, chaps. 10-11), who, with a mind averse to every profitable exchange of money, certainly placed profit from usuries in the lowest place and especially regarded it as foreign to nature; Aristophanes (*Clouds*, v. 1283 ff.); Cato, whom Cicero, *On Duties*, II, chap. 25, reports to have equated lending at interest with killing; Seneca, *On Benefits*, bk. 7, chap. 10; Plutarch, *On Avoiding Debt*. Grotius, however, judges that these men “have regard not so much to what is intrinsic to a loan for consumption as to what generally accompanies it and follows it (usury?)” (*On the Law of War and Peace*, bk. 2, chap. 12, § 20, no. 2).

2. Concerning the consensus of the Scholastic doctors and canonists, we have already spoken in the preceding number.

3. The schismatic Greeks, at least from the sixteenth century, did not regard usuries as intrinsically illicit. (Devoti, *Canonical Institutes*, bk. 4, tit. 16, § 4.)

4. Not all the innovators of the sixteenth century abandoned Catholic doctrine in this matter, and Luther, Melancthon, and Zwingli condemned lending at interest. Calvin, on the contrary, permitted usuries to be exacted from a rich man. His disciple Salmasius reduced Calvin’s doctrine to a system in two treatises, *On Usuries* and *On Bankers’ Interest*. The study *On Usuries* by Charles Dumoulin (Carolus Molinaeus) is also very well known.

5. Afterward it came about that Catholic men themselves seemed to doubt either the force of certain rationales or the truth of the doctrine received until then.

We have already indicated what Pichler thought. Another canonist, Engel, O.S.B. († 1674), on bk. 5, tit. 19, § 1, no. 8, admits that the rationales commonly brought forward to demonstrate the repugnance of usuries with nature are subtle, so that he would rather argue from the evils which they produce for the needy and from the impiety of converting “an act of charity and of human society, which consists in the giving of a loan for consumption, to one’s own profit and another’s loss.”

In Belgium, in the eighteenth century, a great controversy concerning usuries was stirred up by the Jansenists; and a certain pastor of Delft, named Broedersen, who affected the name of Catholic but was a Jansenist, in the treatise *On Licit and Illicit Usuries* acceded to the opinion of Calvin. The eminent Catholic man Scipione Maffei also professed a similar doctrine in *Dell’impiego del danaro* [*On the Employment of Money*].

Benedict XIV gravely censures Catholic men who assented to the new opinions, in the work *On the Synod*, bk. 10, chap. 4, no. 2, where he has the following: “Every profit from a loan for consumption, precisely by reason of the loan for consumption, . . . is usurious and illicit by every law, namely, natural, divine, and ecclesiastical: this has been and is the perpetual doctrine of the Catholic Church, confirmed by the unanimous agreement of all Councils, Fathers, and theologians.” Lessius, chap. 20, no. 23 ff.; Cardinal de Lugo, vol. 2, disp. 25, no. 8; and Schmalzgrueber, on bk. 5, tit. 19, no. 6, to omit others, hold plainly that it is *de fide* that usury is illicit, at least by positive law; but they regard it as in no way doubtful that it is prohibited by natural law and positive divine law. Molina, vol. 2, disp. 304 (to whom Cardinal d’Annibale appeals wrongly), is of the same opinion; Bossuet, work cited, in his fifth proposition, asserts that it must be held *de fide* that usuries are prohibited to all under the

New Law; while Zech, diss. 1, no. 93, also concludes “that usurious depravity must be numbered among divinely revealed truths and, according to the judgment of the Church, the illicitness of usuries pertains to the dogmas of faith.”

Therefore, we cannot but marvel at how Cardinal d’Annibale, vol. 2, no. 533, wrote: “Therefore, by no manifest law, whether natural or divine, is it established that usuries are illicit *per se*, or otherwise vitiated. Indeed, the contrary is rather conjectured from the manner of acting of the Catholic Church.”

§ 2. Doctrinal Notions

363. Concerning the loan for consumption (*mutuum*). 1. It can be described: *A real contract by which a fungible thing is given under the law that after a certain time the same be returned in kind; or, more briefly: The temporary grant of a thing consumable by its first use.*

We have taken the former definition almost entirely from Zech, work cited, diss. 1, § 30, with whom the interpreters of Roman law and the Scholastic doctors agree. For since it is nowhere defined in the canonical laws, it was necessary to derive its true rationale from common use and Roman law.

Three things, therefore, are contained in its essence: a) **A fungible thing**, that is, one which functions in kind, or whose own individual body is regarded less than its kind, for example, grain or money. More precisely, you would say: a thing consumable by its first use, or one which you cannot use except by consuming it either naturally, as when you eat food, or civilly, as when you pay money. It then perishes, not indeed in itself, but for you.

b) **The handing over of that thing to another who has the right to consume it.** Therefore, money or sweetmeats loaned for the sake of display, or merely to adorn the table or the front of a shop, are not the object of a loan for consumption. That thing, however, can be oil, wine, etc.; most frequently it is money. The question now chiefly concerns a loan of money for consumption.

c) **The obligation of returning the kind after some time.** Of returning the kind, that is, the same quantity of a thing similar in quality or goodness, not the very individual thing received; after some time, for, of itself, he who grants money as a loan for consumption extends credit, or cannot demand his thing back before a certain day.

This has seemed to some to be an obligation of the creditor, on account of which the loan for consumption should be assigned to bilateral contracts. Thus Rev. Fr. Pesch, place cited, p. 57. Yet because it is rather a necessary effect of the right transferred and merely pertains to this, that the right not be violated, the practice of regarding the loan for consumption as a unilateral agreement is better retained.

2. Ownership of the money lent belongs to the borrower, since in fact he has the right to use and consume the thing.

This was so certain to the ancients that from it they gathered a fictitious etymology of the word: “The giving of a *mutuum* was so named because from mine it becomes yours.”¹ But certain more recent writers began to doubt this. Yet when they wish acutely to distinguish ideal being, the value of the thing, and its physical being; or when they argue from the fact that the money is called *aes alienum*

[another's money; debt], etc., they do nothing other than obscure by a fiction the plain truth, which comes down to this: the borrower is obliged to pay; therefore, there belongs to the creditor not a right in the thing (*ius in re*) but a right to the thing (*ius ad rem*). Since there inheres in this right some weight worthy of valuation, according as the promised payment appears more or less certain, it is therefore reckoned among the goods of the patrimony and can be designated by the name of a value. But for the same rationale, the very price of something sold is already regarded as increasing the seller's patrimony according to the hope of payment. Would you therefore say that the coins themselves, once the agreement concerning the price has been made, have already changed owner? Besides, it suffices for us that, as cannot be doubted, the borrower can physically dispose of the thing, so that we may have the means of gathering what we wish concerning the gratuitous character of the loan for consumption. Cf. Rev. Frs. H. Pesch, place cited, pp. 44, 45, 55, 56, and Lehmkuhl, vol. 1, no. 1091; and, from the opposing side, Rev. Dr. Funk, *Tübinger Quartalschrift*, 1879, pp. 25-27, and Ballerini, *Moral Work*, vol. 3, tract 8, pt. 3, nos. 223 and 328 ff.

¹ Law 2, § 2, *Digest, On Things Credited* (XII, 1). Donellus, *On Civil Law*, bk. 14, chap. 1, no. 6, charmingly but not more truly completes this explanation: "There is in this word a reciprocation of mine and yours, that is, this force: that mine become yours and, in turn, yours become mine."

3. From this consequence these other two corollaries immediately follow:

- a) In a loan for consumption, the borrower bears the risk of the thing. This is also proved by this other rationale: that the kind never perishes;
- b) The borrower acquires the fruits of the thing, if any are said to exist, since a thing fructifies for its owner.

364. Concerning usury. 1. In the general acceptation, it signifies whatever beyond the principal is to be paid by the borrower by force of a formal or tacit agreement. Whatever, I say, whether it be money or any other thing capable of valuation at a price,² whether it be much or little.

² In this manner the Holy Fathers said, for example, St. Ambrose, *On Tobit*, chap. 14: "Usury is whatever is added to the principal."

Under this rationale, it is *per se* excluded from the loan for consumption in Roman law, as is already derived from the single word *usura*, τόκος, by which among the Romans and Greeks any interest whatever was designated, while in modern languages *l'intérêt et l'usure* [interest and usury], *Zins und Wucher* [interest and usury], *interest and usury*, and *interesse ed usura* [interest and usury] are distinguished. Under this rationale also, the Church prohibited the exaction of usuries by force of the loan for consumption itself.

2. In a more particular acceptation, in certain laws of an earlier, but nevertheless Christian, age, usury designated "profit owed or exacted by agreement from a loan for consumption,"³ that is, from the use of a consumable thing; under this rationale, usury was condemned without qualification by the canons of the Church.

³ St. Raymond, *Summa*, bk. 2, tit. 7.

Here fits the description which, in the constitution *Inter multiplices*, approved by the Fifth Lateran Council, session 10, Leo X inserted incidentally as an argument of the adversaries of the Mounts of Piety:⁴ "This is the proper interpretation of usuries: when, namely, profit and offspring are sought from the use of a thing which does not beget, with no labor, no expense, and no danger."

⁴ Hardouin, vol. 10, col. 1773. Take care, therefore, not to accept these things as a definition of the Council itself; Schmalzgrueber, on bk. 5, tit. 19, no. 8, fell into this error when he regarded as a decision of the Council these other words which, in the same preface, also belong to the adversaries: "Christ the Lord, as Luke the Evangelist attests, bound us by an open precept that from a loan for consumption given we ought not to hope for anything beyond the principal."

Usury understood in this way is sometimes called lucrative and is distinguished from moratory or punitive usury, which was exacted as a penalty for delay in paying; and from compensatory or restorative usury, which was repaid for the creditor's interest, for example, from emergent loss (*damnum emergens*), profit ceasing (*lucrum cessans*), or the danger of losing the principal. Cf. Schmalzgrueber, place cited, nos. 91-92.

Therefore, certain authors wrongly judge that the Council of Trier in the year 1310 (Mansi, vol. 25, col. 289) designated interest strictly so called by the words *moderate interest*, which must be understood merely of compensatory usury.

3. The sin of usury can be committed either by exacting that a greater sum (principal, capital) be returned than was handed over; or by annexing burdens or unjust modes to the obligation of returning; or, properly, by exacting interest without a title or beyond the title. Here usury is had in the stricter sense.

4. Lucrative usury is distinguished:

a) Into real and mental, almost as in simony, so that mental usury is that of one who, without a formal external agreement, intends, from the loan for consumption which he grants, to oblige the other from justice to pay usuries.

b) Into formal or open, and disguised, which is clothed, as it were, with the cloak of another honest contract. Hence the controversies, once fervent, whether this or that contract—for example, a redeemable rent contract (*census*)—disguised usury or not.

Such usury often lay hidden in purchase and sale through various agreements of resale. Only historically must the famous *Mohatra*, or *Baratra*, be recalled, which consisted in this: someone sold on credit, at a high price, merchandise not needed by the buyer Titius, which Titius immediately sold back to him at a low price but for ready money. When the day arrived, the first seller received that high price from Titius. For example, Titius buys a clock for 150 francs, to be paid after a year, and immediately, having sold the clock to the same seller, obtains 120 from him. When the year has elapsed, Titius must return 150 to the seller.

As is evident, this resale, if it is done by agreement, contains disguised usury (proposition 40 among those condemned by Innocent XI); and on account of the very great danger of abuse, even without an agreement it was often prohibited. Cardinal de Lugo, disp. 26, nos. 204-208.

c) Into interest on the principal, or perpetual interest (*intérêts simples* [simple interest]), **and interest upon interest** (*intérêts composés, intérêts des intérêts* [compound interest, interest upon interest]), which Cicero also calls renewed interest, *anatocism* (in French also: *anatocisme*).

d) From quantity they were called *unciariae, centesimae*, etc.

The maximum usuries which could be exacted by stipulation in Roman law were the hundredths,⁵ one for each month, and therefore 12 percent. They consequently constituted, as it were, the

usurious *as* (consisting of 12 *unciae*), or the unit to which the lighter rates were referred. Hence the appellations:⁶ interest *ex deunce*, or *usurae deunces* (11/12) = 11 percent; *ex dextante* (10/12) = 10 percent; *ex dotrante* (9/12) = 9 percent; *ex bessale* (8/12) = 8 percent; *ex septunce* (7/12) = 7 percent; *ex semisse* (6/12) = 6 percent; *ex quincunce* (5/12) = 5 percent; *ex triente* (4/12 = 1/3) = 4 percent; *ex quadrante* (3/12 = 1/4) = 3 percent; *ex sextante* (2/12 = 1/6) = 2 percent; *ex uncia*, or *usurae unciarum* (1/12) = 1 percent.

⁵ Nevertheless, as soon as the sum of usuries owed equaled the principal—as happened with hundredth usuries after one hundred months—the usuries ceased, so that usuries could not be sought beyond double the principal. Cf. law 26, § 1, *Digest, On the Recovery of What Is Not Owed* (XII, 6), and law 4, § 1, *Digest, On Maritime Interest* (XXII, 2).

⁶ They were often understood wrongly; for example, by St. Raymond, who in the *Summa*, bk. 2, tit. 7, equated hundredths with interest at 100 percent; and by Concina, *On Usuries*, p. 382, and, after him, by Devoti, *Canonical Institutes*, bk. 4, tit. 16, no. 1, note 2; so that they confused the *unciarum*, which were the minimum, with the bloodstained or hundredth usuries.

365. Concerning the sterility of money. 1. A thing is called plainly sterile or unfruitful when it bears no fruits, either fruits properly so called, such as the apples of a tree, wool, or the offspring of sheep, or fruits so called broadly, which correspond to a utility distinct from its destruction or consumption, such as habitation in a house or the cutting action of a knife. The use of a sterile thing is said to consist in its consumption (*abusus*), because its use is its consumption. (II-II, q. 78, art. 1, corpus.)

These things are called consumable by their first use; and, because they are generally fungible things, the two names are often intermingled.

2. But the very destruction or consumption of a thing of this kind can either have power to generate other things, whether similar or even of greater value, or immediately diminish the patrimony. Therefore, the consumption itself is distinguished into fruitful, such as the consumption of coal in a workshop, by which motive power is generated; and sterile, such as the consumption of coal by which someone heats a room.⁷

⁷ Take care, however, not to value things economically solely from profitable consumption. For since it would be a vicious circle to refer man, to whom inferior things are referred as to their end, back to those things as a means, things are ordered mediately or immediately to a non-economic use, and finally they are sometimes capable of valuation insofar as they are useful to man. (Again against Bastiat.)

3. The metal, indeed, from which money is made, although it does not bear fruits—whence the saying, *Money does not beget money*—has a use distinct from consumption. But that is not the formal use of money. Similarly, there is “a secondary use of money . . . if someone were to grant coined money for display” . . . (which use can licitly be sold); “but the principal use of silver money is the alienation of money in exchanges,”⁸ “δαπάνη καὶ δόσις” [expenditure and giving], as Aristotle says, *Ethics*, IV, 7. By this use it does not indeed perish physically, but it perishes for the possessor.

⁸ St. Thomas, II-II, q. 78, art. 1, ad 6.

Hence money is sterile in itself; but by exchange it becomes all the things into which it is converted. Therefore, from the things which are commonly obtained for money, or are known to be capable of being obtained, the economic value either of money itself or of its use must be judged. In this manner St. Thomas had already wisely admonished, on *Ethics*, V, lect. 9, at the end: “It makes no difference, however, whether five beds are given, or only what five beds are worth.”

We say the things which are commonly obtained or are known to be capable of being obtained, because we have demonstrated that common estimation is founded upon common utility, from which objective value proximately flows. Besides, we by no means deny that a special utility can also be added here which makes possession of money more estimable to someone.

366. Concerning extrinsic titles. An extrinsic title, strictly speaking, is called a cause added to the essential rationale of a loan for consumption and, moreover, connected with a peculiar condition of the creditor or debtor, on account of which moderate interest can justly be exacted in a loan for consumption. Therefore, a cause on account of which an increase can be sought accidentally by all lenders of money, although coming to the loan for consumption from without, will nevertheless not properly be called an extrinsic title.

Therefore, in order that you may justly exact interest on account of this title, it is necessary that it truly support you, and that the debtor, aware of the matter, consent to this payment.

These titles, from Paul de Castro († 1447),⁹ who was regarded as their author, are sometimes called the Castrenian requisites. They are chiefly:

⁹ He himself seems to have been the first to dispense a merchant and a man accustomed to conduct business from a strict demonstration of profit ceasing.

1. Danger to the principal, when either the loss of the principal or difficulties and expenses in recovering it must be feared. And because undertaking such a burden is capable of valuation at a price, moderate interest can be received even if the principal is afterward returned. Thus, certain authors—whom Rev. Fr. Weiss still follows, work cited, pp. 692-693 and 708, at the end—entirely without merit regard that interest as a kind of security which must be returned as soon as, the money having been restored, the danger has passed away.

According to the quality of the danger, a greater or lesser usury will be licit.

2. A conventional penalty, proportioned to the culpable delay of the debtor; for there is no question of a penalty which compensates for foreseen or probable damage which any delay could bring to the creditor.

3. Emergent loss (*damnum emergens*) and profit ceasing (*lucrum cessans*). When it is likely that the creditor, from the lack of money, will suffer damage in his affairs (for example, he would have repaired a house which is now collapsing), either of two things can be agreed upon between the parties by stipulation: either that the whole damage which follows be compensated afterward, or also that, according to the valuation of the risk, a fixed interest be established which is paid each year. Similarly, he who wishes to conduct business and, in order to conduct it, needs the money which he gives as a loan for consumption, can stipulate that, according to the valuation of the hope and danger and with the expenses deducted, moderate interest be paid to him.

In admitting compensation for emergent loss, the Scholastic doctors, if perhaps Scotus is excepted, do not seem to have experienced difficulty. Profit ceasing was doubted for a longer time, although already in Roman law *that which was of interest to me* was understood as “how much is lacking to me and how much I could have gained” [law 13, *Digest, On a Matter Being Ratified* (XLVI, 8)]. St. Thomas seems to favor it little (*Opusculum* 21, *On Usuries* [whether genuine?]; II-II, q. 78, art. 2, ad 1; q. 62, art. 4). By the end of the sixteenth century, however, this controversy had been concluded. Danger to

the principal was disputed for a still longer time. Cf. Funk, *Geschichte des kirchlichen Zinsverbotes* [*History of the Ecclesiastical Prohibition of Interest*].

4. Scarcely different formally from these titles is the cause which St. Alphonsus regards as probably just and which is derived from the long time for which the loan for consumption is given. For over a long span of time, it seems that one of the enumerated titles will not be absent.

5. Concerning the title of civil law, there was much dispute: some denied that a gain unjust in itself could be made honest by civil law; others invoked the right of high dominion, from which the Prince has the faculty of transferring ownership for a just cause pertaining to the common good; finally, others rejected the fact itself and did not concede that the legislator had willed to supply a nonexistent title, but had permitted usuries merely from the presumption of a true title.

Nothing has been defined in this matter by the Church. It does not indeed seem to us that the Prince's faculty of conceding some interest can be denied, if, on account of the common good, the willingness to lend ought truly to be encouraged by this as by a reward; but this necessity will scarcely arise except in those circumstances in which we shall soon establish that it is universally licit to lend money at interest. Thus, approximately, Rev. Fr. Lehmkuhl, vol. 1, no. 1102, whom you may consult concerning all these titles. Ballerini-Palmieri, vol. 3, tract 8, pt. 3, no. 242 ff., also disputes these at length.

367. Definition of the question. 1. WE DO NOT HAVE TO TREAT: a) **Extrinsic titles**, or moratory and compensatory usury, since the classical doctors have treated them excellently and the controversy has been removed by the very consensus of the learned;

b) **The obligation of charity**, whose principles easily become known, but rather the necessity of justice;

c) **The specification of the sin of usury**. For this matter is sufficiently clear, since it is established that mercy is offended if the poor man is harassed; but that an injury, if there is any, is theft or even robbery, according as a thing of an owner reasonably unwilling has merely been taken away, or force has also been inflicted upon his person.

2. BUT IT IS ASKED: a) **Whether or not exacting lucrative usuries is unjust**, that is, contrary to the equality owed in an agreement by which a fungible thing is lent, just as the request for an excessive price is repugnant to the equality to be preserved in a sale.

b) **How the discipline of the Church is to be interpreted and vindicated from calumnies**. For her laws concerning usuries seem to incur various reproaches and, at first appearance, to conflict somewhat with one another.

§ 3. Several Explanations of Catholics Are Refuted

N.B. Concerning these two questions, diverse and not few opinions of Catholics have appeared, which we shall attempt to refute, at least indirectly, by the conclusion itself. Yet lest they make the demonstration more difficult, it is worthwhile to say precisely here what they intend and under what peculiar defects or inconveniences they labor.

Therefore, we do not mention here the opinions which we attack directly, but reserve them for the next article.

368. The severer opinion. In France, there are still some who simply reprove the present custom of lending at interest. They judge it in no way approved by the Church, since, the hardness of hearts having been perceived, she merely, in order to avert greater evils, prudently connives at and unwillingly tolerates what she is unable to prevent. Thus Rev. Dr. Jules Morel, in the work *Du prêt à intérêt* [*On the Interest-Bearing Loan*]; thus Rev. Modeste, *Le prêt à intérêt, dernière forme de l'esclavage* [*The Interest-Bearing Loan, the Last Form of Slavery*]. The same seems to have pleased Lachat, the Most Illustrious Bishop of Basel.

But, as will become manifest from the argument of the conclusion, such is the style of the Roman Curia that it indicates at least a probable rationale which today renders lending at interest honest.

369. Explanation from intention, or the system of the double contract. Although he did not invent it, Ballerini defends and extensively explains it, *Moral Work*, vol. 3, pt. 3, chap. 2, *On Contracts in Particular*, nos. 280-348, and many imitate him. As these authors opine, money can be lent in two ways: either with a liberal intention, in which case a loan for consumption would be had, which therefore is essentially gratuitous; or, the cause having been changed, by quasi-renting the money, in which case the interest is the just price of the rental. Formerly the loan for consumption was frequent, whose essential gratuitousness the Church rightly defended. Yet she did not thereby disapprove the rental of money which is practiced today.

If this doctrine had merely to be reconciled with the Scriptures and the testimonies of the Holy Fathers, perhaps it would not be repugnant “extrinsically.” For in truth, as we have seen, the precepts of Sacred Scripture are precepts of humanity, and the Holy Fathers object to nothing more in moneylenders than that, under the appearance of a benefit, they thrust the poor and afflicted into the greatest grief. But account must also be taken of the universal prohibition of the Church and of the doctrine which, for three or four centuries, became established in all the disciplines of theology. But now:

a) This explanation is openly opposed to that Catholic doctrine. For the price to be paid by the lessee—what is it formally except the price of the use of the thing leased? He, therefore, who concedes the rental of money acknowledges a price of the use of money. But that the use of money, distinct from consumption, has a price—this the doctors and jurists especially denied, and therefore they established that the loan for consumption is by its nature gratuitous.

b) Moreover, it is proved contrary to the mind of the Church. For in Roman law the loan for consumption was not essentially gratuitous. For it was permitted to join to the loan for consumption a stipulation of interest. Therefore, Ballerini himself¹ is compelled to admit that the rationale of the loan for consumption handed down by him is foreign to Roman law. But how little likely it is that the Church, which nowhere defined the loan for consumption and was born and propagated in the Roman Empire, used the same word for the loan for consumption with a signification foreign to this law.

¹ Place cited, no. 281.

c) Moreover, this explanation cannot stand with the decrees which reprove even disguised usury, in which certainly neither an intention of beneficence can be imagined nor is there even the name of

a contract which from intention is necessarily gratuitous; nor with chapter 10, *Consuluit, On Usury*, where this very intention of profit is regarded as depraved; nor with the encyclical *Vix pervenit*, which, in proposition 5, expressly denies that, apart from the loan for consumption, other just contracts are always at hand, under the protection of which someone can licitly seek an increase. To what purpose must recourse be had to those contracts of rent (*census*), etc., if it would have sufficed to will to rent the money?

d) This explanation does not preserve the honor of the Church. For those who exacted usuries in a loan for consumption manifested sufficiently by that very fact that they were not led by an intention of liberality. They would merely—if a loan for consumption were essentially gratuitous from this intention—have erroneously said “loan for consumption” for “rental of money.” Therefore, as Rev. Fr. Palmieri very well observes in a note to Ballerini-Palmieri, place cited, no. 347, 3°, by so many decrees, threats, and penalties she would have raged against a slip of the tongue. And the Church would have been ignorant of what nevertheless is exceedingly frequent: that a contract, while retaining the name of that whose species it presents—for example, a sale—passes into another kind of transaction—for example, a donation—from a changed condition or intention. Thus a loan for use (*commodatum*), with payment established, ends in a rental; “a mandate, unless it is gratuitous, falls into another form of transaction” (§ 13 of the *Institutes, On Mandate*, III, 27).²

² Therefore, Engel already observed skillfully, on bk. 5, tit. 19, no. 36, that we ought to be little solicitous about the word *mutuum* which perhaps the unlearned employ, provided that they will make the agreement in that better manner in which it is licit and there is an occasion for another profitable contract. And he adds this plain rationale: “Since intention ought not to serve words, but words ought to serve intention.” Gregory of Valencia had already taught the same earlier, *Theological Commentaries*, vol. 3, disp. 5, q. 25, pt. 2.

e) Therefore, Bossuet, proposition 6, rightly rejects every rental of money; Benedict XIV, *On the Synod*, place cited, no. 2, asserts that this rationale for excusing usury, alleged by Salmasius, is refuted by most heretics who nevertheless contend that usuries are licit; and Zech, diss. 1, no. 195, already presses the patrons of a similar opinion with these most grave words (we by no means, however, suppose a mind of this kind in Catholic men such as Ballerini): “It suffices . . . for refutation that a matter plain in itself is wrapped in various phrases by the patrons of this doctrine, so that they may prove that usury is never committed . . . that the question concerning usuries is therefore one merely of name, and consequently that all things which are established against usuries in Sacred Scripture, the decrees of Councils, and the volumes of the Holy Fathers³ are to be regarded as vain, empty, and ridiculous.”

³ From what has been said, it is evident that this rebuke is nevertheless somewhat excessive.

This opinion is in no way corrected by the fact that you do not call that agreement in which a stipulation of interest is made a rental of money, but call it an unnamed contract or a prestation on credit.⁴ For the whole matter turns upon this: Is there, apart from the intention by which the creditor is perhaps moved to stipulate, *per se* in the very prestation by which someone cedes money or a fungible thing to another until a certain day, something which is objectively worthy of compensation distinct from the restitution of the thing itself which was granted? All the Scholastic doctors, whose doctrine could be called Catholic, denied this; Benedict XIV denied this when, in the second conclusion of the encyclical *Vix pervenit*, he declared that interest received by force of the loan for consumption was contrary to the equality of what was given and received. But if you affirm that there

is such a thing, then the intention of the parties alone will make the contract gratuitous or lucrative; indeed, it will not be gratuitous unless the creditor with a liberal intention forgoes the just compensation of his prestation. And because liberality is never commanded from justice, it has always been licit, consistently with justice and with force and threats excluded, to seek moderate interest.

⁴ Thus, for example, Villada, *Cases of Conscience*, vol. 2, case 5, no. 46 ff., p. 261 ff.

370. Explanation from the end of the loan. For there are some who judge that a loan for consumption of money which is consumed is indeed gratuitous *per se*, but not one of money which is expended profitably or usefully (*prêt à la consommation, prêt à la production* [loan for consumption, loan for production]).⁵ Therefore, these authors excuse present-day lending at interest, partly because, if the loan is sterile, an extrinsic title is usually of aid to the creditor; partly because today the loan is generally productive.⁶

⁵ The inventor of this distinction seems to have been a Parisian priest named Le Correur, who, with his name suppressed, published at Mons in Hainaut in the year 1684 a book whose title was *Traité de la pratique des billets entre les négociants* [*Treatise on the Practice of Notes among Merchants*]. Cf. Van Roey, *De iusto auctario* [*On a Just Increase*], p. 24.

⁶ This pleases Claude Jannet, work cited, chap. 3, II and III; nor does Rev. Dr. Funk oppose it, who places the formal rationale of the sin of usury in the abuse of superior force to extort consent. Therefore, according to the distinguished professor, there would be place for this sin equally in other agreements as in a loan for consumption.

This explanation can be accommodated sufficiently well to the statements of the Fathers; indeed, perhaps a few things can be brought forward from one or two Fathers which seem positively to favor it. Moreover, its use does not seem dangerous. For where money is granted as a loan to a rich man or businessman, an occasion is scarcely absent for another agreement—a rent contract (*census*) or partnership—which produces an honest profit from the money. Finally, that fruitful destination of the money lent is to be referred to the circumstances which support the true solution, as we shall see.

Nevertheless, we cannot assent to it. For it is formally contrary to the encyclical *Vix pervenit*, in these words: “Nor indeed, for purging this stain [of usuries], can any aid be summoned . . . from the fact that he from whom that profit is demanded solely on account of the loan for consumption is not poor, but rich; and is not going to leave the sum lent to him idle, but is going to expend it most usefully for enlarging his fortune, either by purchasing new estates or by conducting profitable business.” Moreover, it is repugnant to the principle which, with the common agreement of the Catholic school, we demonstrated in the preceding thesis: that the proper advantage of the one acquiring, that is, here of the borrower, cannot be computed in the cession of the thing.⁷

⁷ Rev. Dr. Funk frankly admits that his opinion is opposed to the encyclical *Vix pervenit* and to the doctrine which in the Middle Ages was handed down in the decrees of the Church and the documents of the Catholic schools. Cf. Maffei und das Zinsverbot [*Maffei and the Prohibition of Interest*], *Quartalschrift von Tübingen*, 1875, pp. 42-43.

371. Explanation from the presumption of a just extrinsic title. Today, since on the one hand the fruitful use of money is easy and on the other hand so many businesses, often lightly attempted, are subject to many vicissitudes, the presumption of an extrinsic title which can be compensated by moderate interest favors the creditor. Thus Rev. Fr. Weiss, O.P., work cited, pp. 691-694, and, most recently, Rev. Dr. Van Roey, who learnedly defended this opinion in his praised dissertation *De iusto auctario* [*On a Just Increase*]. Rev. Fr. Castelein, on the contrary, seems now to have abandoned that opinion for ours in his work *Natural Right*.⁸

⁸ Thesis XI. In *Institutions of Moral Philosophy*, pp. 404-408, he adhered rather to the explanation from presumed extrinsic titles.

This explanation seems to us stained by more than one defect.

1. First, you would attempt in vain through it to vindicate all present-day lending of money at interest as immune from the stain of injustice. We freely concede that some extrinsic title is generally available to many, indeed most, creditors, and this will be for us the beginning of the argument. Therefore, we shall not deny that a just cause for seeking interest can be presumed *per se*. But you would gratuitously affirm that, for example, profit ceases for all from the fact that they lend money, or even that this is established concerning all the monies of many persons. Indeed, sufficiently evident experience is rather opposed. For very many are accustomed to commit sums to bankers for a few days, while retaining the faculty of demanding them back at will; or, if they are of lesser importance, to entrust them to savings banks and thus obtain small interest. What personal consumption of these monies, which is productive, can generally exist? What extrinsic title exists in sums which can be demanded back so quickly? Moreover, in order that the title of profit ceasing truly be present, it is necessary that to the occasion of profit there be added a will or intention to profit from the money. But many who, unless they could receive a secure profit from money given as a loan, would prefer to keep their monies idle do not possess this will. Thus it happened in Belgium that, when the savings banks which are called after Raiffeisen had been established, ten million francs—one hundred times one hundred thousand—were entrusted to them, by far the greatest part of which had been kept hidden among farmers.⁹

⁹ Cf. also what Rev. Fr. H. Pesch observes concerning this matter, place cited, pp. 50-52.

Come now: if interest is sought formally on account of an extrinsic title, this must be held: presumption yields to truth.¹⁰ As often as the title fails, so often the cause, and the just interest itself, will fail.

¹⁰ Cf. already Reiffenstuel, *On Usuries*, no. 52; Schmalzgrueber, in the same place, no. 145.

2. Moreover, according to the varying capacity, indeed according to the very will—certain, uncertain, etc.—to profit, the hope of profit and consequently the just measure of interest will vary. Therefore, the patrons of this opinion will not easily explain how there can be a common determination of just interest and why a different one should not be established in a different case.

3. Nor does this opinion explain how, in her recent decrees, the Holy See was not solicitous concerning the reality of the title, was able to omit the question concerning the title of civil law, and admits a certain uniform rate which is not, however, to be accommodated to the conditions proper to each loan for consumption. Unless, nevertheless, they should say that the Holy See, with an inspection of the principles having been omitted, responded merely from probable opinions.

4. Finally, without cause, as will appear from the demonstration, the patrons of this tenet here abandon the common principles concerning value.

372. Explanation from civil law. But if, with others whom Gury, *Moral Theology*, vol. 1, nos. 863-864, seems to support, you perfect the latter explanation by invoking the title of civil law, which, on account of the common good, in order that a loan for consumption may be granted more easily, may have permitted a certain interest, we shall show by the proof itself that we are pressed by no necessity for a refuge of this kind. Moreover, it is not sufficiently established that the legislator

willed, on account of the common good, to supply the defect of a just title, since the very permission of the laws can be understood as civil permission, or immunity in the external forum, made on account of the presumption of a just title and by which each person would be permitted to act according to the judgment of his own conscience. Cf. Reiffenstuel and Schmalzgrueber, place cited. And what proves that present-day legislators were moved by this consideration more than the ancients? Yet from Roman law no excuse of conscience was sought.

Article II. Formulation and Arguments of the Conclusion

THESIS XXVI

Every profit sought from a rationale intrinsic to the loan for consumption is unjust.

For a certain condition of the commonwealth, however, it can be licit per se for all to lend money at moderate interest.

The former severity of the Church and her present indulgence are immune from every accusation.

373. I. State of the question. 1. INTENTION OF THE THESIS. We accomplish three things by this thesis. In the first part, we demonstrate the intrinsic malice of the sin of usury according to its genuine concept. Then we vindicate, in present circumstances, the universal liceity of moderate lending at interest. Finally, in the third part, we endeavor to avert the accusations which have customarily been raised against Holy Mother Church in this matter.

2. OPINIONS. The first part is asserted:

a) Against Molinaeus¹ and the heretics later than the age of Calvin, who think that usury is forbidden only when it is repugnant to charity;

¹ *Tractatus De Usuris* [*Treatise on Usuries*], no. 10.

b) Against some Catholics of our age: α) Some rather directly deny that usuries from a loan for consumption are *per se* illicit; and C. d'Annibale openly favors them when, *Summula*, vol. 2, no. 533, he contends that its dishonesty is established by no law; β) Others less directly reach a similar conclusion by first changing the rationale either of the loan for consumption itself, as those who think with Ballerini, or of the sin of usury, as does the distinguished Professor Funk.

The following oppose the **second part**:

Socialists, who regard every interest as unjust and deny that money can be fruitfully invested unless by one who at the same time contributes labor;

Some Catholics, who judge that the canonical prohibitions are still in force.

The **third part** offends, as is evident, only non-Catholics and rationalists who, adhering to liberal tenets, reproach the Church because she formerly impeded the growth of the arts or of business. For those who glory in the Catholic name strive in various ways to defend the Church.

3. THE TERMS ARE EXPLAINED.

It is unjust, and not merely contrary to charity or forbidden by positive law.

Every profit, and not only immoderate or biting usuries. Moreover, it makes no difference in what kind of prestation that profit is sought, whether of money or of another thing, so that we include everything to which there corresponds in the debtor some burden which must be borne from justice.

From a rationale intrinsic to the loan for consumption, that is, by force of those things which are contained in the rationale of a loan for consumption, or, if you prefer, by force of the concession for a time of a thing consumable by its first use. Cf. 363. In these things we deny that there is a title for making profit. We do not, however, contend that anything in the contract of a loan for consumption is positively repugnant to making profit, provided that a sufficient cause is added, whether special—for example, probable loss to the creditor or a disposition of gratitude in the borrower—or even universal on account of some condition of the commonwealth, such as we judge exists today. Wherefore, the profit which we disapprove as made from a loan for consumption *as such* we can easily approve as sought from *such a loan for consumption*.

For a certain condition of the commonwealth, however. Therefore, with nearly all Catholics, we too look to the circumstances of society.

The fact that this rationale is not contained in the genus of a loan for consumption indicates something adventitious and contingent as regards the rationale of a loan for consumption *as such*.

Per se: for sometimes we can be forbidden by charity to seek interest, where the precept of assisting one's neighbor presses.

For all, so that they can not only lay aside anxiety about seeking some extrinsic title for themselves, but can honestly receive usuries even if it is established that no title is of aid to them.

It can be licit, that is, permitted by divine law. For human law must also be considered besides.

To lend money. We use these less definite words so that we omit for the present whether that agreement can retain the name of a loan for consumption. In French you would say: *La concession de crédit, le prêt d'argent* [the granting of credit, the loan of money].

Money, I say: indeed, nothing *per se* prevents another thing from being lent in a similar manner; nevertheless, we do not judge that today the same cause always exists for other fungible things. For in rural places, for example, certain loans for consumption of flour and milk are made for a short time, which from usage and common estimation are not judged to have to be repaid with some interest.

At moderate interest. For the just price must always be observed; by exceeding it, you would commit the sin of usury.

The former severity of the Church, by which she universally forbade exactions of interest,

and her present indulgence, by which she seems universally to permit lending at interest,

are immune from every accusation: whether of error, of inconsistency, or of opposition to the temporal happiness of society. For to these all the principal heads of complaint are reduced.

4. NOTE ON THE THESIS. a) It seems to us **theologically certain**, not only insofar as it says that the laws of the Church are immune from error, but also insofar as it argues the injustice of profit sought from a loan for consumption. Nevertheless, out of deference to the authority of writers of our

age who, certainly led by good counsel, obscure this truth, we concede that we should abstain from branding with a theological note the opinions contrary to our first conclusion.

b) We regard the remaining things as **simply certain**. Indeed, we propose our explanation as the more probable one.

II. PROOF

374. A. OF THE FIRST PART. *Every profit sought from a rationale intrinsic to the loan for consumption is unjust.*

Argument 1. From ecclesiastical monuments. a) By universal laws—which can establish nothing contrary to faith or morals—the Church prohibited every profit from a loan for consumption, so that the Supreme Pontiff declared that he could not dispense in this matter.

But. Such a prohibition argues that profit is unjust by the nature of the thing.

Therefore. From infallible monuments of the Church we infer the injustice of every profit sought from a rationale intrinsic to the loan for consumption.

To the major. Observe first that the collections of the decretals of Gregory IX, of the Sixth Book, and of the Clementines are **authentic**, so that the individual laws contained in these collections, whatever their first origin or signification may have been, by the fact of the promulgation of the collections themselves² obtain the force of universal laws of the Church and must be interpreted as they are found inserted in the *Corpus of Law*. Now, that the universal laws of the Church are infallible in this manner, so that they can establish nothing contrary to faith or morals, is certain doctrine among theologians.

² The first collection was promulgated by the constitution *Rex Pacificus*, September 5, 1234; the second by the constitution *Sacrosanctae*, March 3, 1298; the third by the constitution *Quoniam nulla*, October 25, 1317.

The matter to be established is this: **1. The Church prohibited every profit from a loan for consumption.** We already have this from chapter 7, *Praeterea, On Usuries*, which, after the precept, “Moreover, forbid your parishioners to receive usuries,” imposes penalties upon both clerics and laymen; and more clearly from chapter 10, *Consuluit*, under the same title, where the Supreme Pontiff, having been asked what right ought to be observed concerning one who, “since he would not otherwise be about to lend, lends money with the purpose that, although every agreement is absent, he nevertheless receives more than the principal,”³ or one who “does not otherwise grant a pledged word under oath⁴ until, although without exaction, he receives some emolument from it,” thus defines the matter: “Men of this kind, because of the intention of profit which they have, must be judged to act wrongly, and must be efficaciously induced in the judgment of souls to restore those things which have been received in this manner.” The same is moreover now entirely established from the longstanding consensus of theologians and canonists, who for many centuries attributed this force to the canonical enactments concerning usury.

³ In these marks recognize mental usury.

⁴ *Parabola* here means the same as *word, speech* (Du Cange, *Glossary*). In French you would say: *Parole jurée* [pledged word].

2. The Supreme Pontiff declared that he could not dispense: for thus reads chapter 4, *Super eo*, under the same title: “We do not see that any dispensation can be made concerning this.” The matter concerned, moreover, usury which would be admitted for the ransoming of captives.

To the minor. A prohibition of this kind argues **divine law**, and indeed **natural law**. **Divine**, for otherwise the Supreme Pontiff could dispense; **natural**: for, in the New Law, it is a general canon that we are not bound by a positive divine precept except concerning faith and the sacraments (cf. Suarez, *On Religion*, tr. 2, bk. 2, chap. 1). **But.** A universal prohibition of natural law cannot be explained in this matter without injury to justice. For in the case of a rich borrower, there is no obligation of mercy. Moreover, the obligation of restitution which is frequently inculcated can scarcely be declared otherwise.

b) A confirmation of the greatest weight comes from the encyclical

Vix pervenit, which was indeed first addressed only to the bishops of Italy, but afterward was sent both by Benedict XIV himself and by the Roman Congregations to other regions, so that for nearly a century it was the constant norm for deciding cases in the Church,⁵ and in which, moreover, the Pontiff testifies that he settled the matter after the case had been diligently discussed and by the unanimous vote of an assembly, convened for that purpose, of most distinguished men.

⁵ Cf., for example, Instruction of the Holy Office, February 4, 1827; Response of the Holy Office, November 29, 1854, *Collectanea of the Propagation of the Faith*, nos. 2133, 2136.

C. d’Annibale, vol. 2, no. 532, 533, would free himself from this difficulty by saying that “there was dispute back and forth concerning its genuine sense”; but these things are lightly asserted. For nothing is clearer than the text of the document itself, as Rev. Dr. Funk⁶ admits; and, for one who reads the doubts proposed to the Roman Congregations, it is evident that only this one matter came into controversy: whether the encyclical was to be understood with the title of civil law excluded or even posited. Cf. *Collectanea of the Propagation of the Faith*, no. 2140.

⁶ In the article cited, 1875 (*Tübingen Quarterly*), pp. 42, 43.

Now the words of the encyclical contain our position verbatim:

“The kind of sin which is called usury . . . ,” it says in the first proposition, “consists in this, that someone, from the loan for consumption itself (which by its own nature demands that only as much be returned as was received), wishes more to be returned to him than was received, and therefore contends that some profit beyond the principal is owed to him by reason of the loan for consumption itself.”

And under no. II: “He is certainly convicted of acting against the law of the loan for consumption, which is necessarily concerned with equality in giving and returning, if, once equality has been established, he does not yet fear to exact something more from anyone by force of the loan for consumption itself (for which satisfaction has already been made by an equal).”

Argument 2. From reason. It is contrary to the equality of justice to seek the price of a use which does not exist.

But. He does this who intends to profit by force of a loan for consumption.

Therefore. He who intends to profit by force of a loan for consumption violates the equality of justice.

The minor is proved. For the concession of the principal thing is compensated by the restitution of a thing similar in quality and quantity, just as, in a lease, the horse is returned for the horse. The danger, moreover, of losing the thing does not *per se* become greater than it was before; or rather it is diminished, since the borrower also bears the fortuitous event. Indeed, this security can compensate for the inconvenience, minimal in itself, which the other sustains from having relinquished for some time the faculty of consuming the thing. For that deprivation is often not burdensome, as when, because of the short interval or the abundance in which the thing is at hand to the creditor, he will in no way need, for example, that money which he has given as a loan for consumption. And today the growing practice of renting, for a price, strongboxes in large banking establishments, where money can be kept safely, gives an excellent confirmation of this assertion.

But if it happens that the extension of credit is rendered burdensome by an accompanying danger or deprivation, this **compensatory usury** is indeed justly sought, but not by force of the loan for consumption.

It remains, therefore, that usury sought by force of the loan for consumption is formally the price of the use of a thing communicated for some time, just as happens when a horse is let for hire. But the thing in question is one whose use consists in consumption. **Therefore.** He who seeks to profit from a loan for consumption, or to receive anything beyond the principal under a title of strict justice, seeks the price of a use which does not exist. As St. Thomas says, II-II, q. 78, art. 1, he is like a seller of wine who wished to sell separately the wine and the use of the wine.—Nor should you say that the consumption itself can be fruitful. For a loan for consumption, in its own rationale, does not of itself contain definitely either this kind of consumption or its common availability, which can have a price. Therefore, neither is this a rationale for profiting by force of the loan for consumption.

It is confirmed 1) by the authority of the Catholic school.

It is confirmed 2) by those who today are most versed in pecuniary affairs and who admit that it is not repugnant for interest to become zero.⁷

⁷ “The rate of interest on money tends to fall: that is a blunt fact. It does not appear probable that it will become zero, but still this is not mathematically impossible, and one can even conceive that it might become negative, with bankers demanding a premium to preserve capital and assure its security.” H. Laurent, *Théorie et pratique des assurances sur la vie* [*Theory and Practice of Life Insurance*], p. 115, admissions examiner at the École Polytechnique, member of the Institute of French Actuaries.

375. B. OF THE SECOND PART. *For a certain condition of the commonwealth, however, it can be licit per se for all to lend money at moderate interest.*

Argument 1. *From the practice of the Church*, such as appears in the responses of the Sacred Congregations to which we appealed above in the historical notices. For not once but many times, both through the Sacred Penitentiary and through the Holy Office, with the Supreme Pontiff approving, when positively asked about liceity, the Church judged that **all**, both ecclesiastics and laymen,⁸ **without consideration of a title,**⁹ **nor of good faith, insofar as the obligation of justice is concerned,**¹⁰ were not to be disturbed on account of lending at interest, provided that they were ready to stand by the mandates of the Church. Now, this formula, according to the testimony of St.

Alphonsus, vol. 3, no. 765, “signifies not mere tolerance, but positive permission”; and, since Catholic theologians commonly—C. d’Annibale, Pesch, Lehmkuhl, Ballerini-Palmieri, etc.—interpret these responses as truly permissive, and the matter concerns morals, in which, had she been asked, the Church would not have dissembled, this style of the Curia certainly argues at least a probable rationale which today makes lending at interest honest in general.

⁸ Holy Office, August 31, 1831.

⁹ Holy Office, January 17, 1838.

¹⁰ Sacred Penitentiary, January 17, 1836.

That the Church did not issue a solemn definition concerning this matter is already sufficiently explained by the fact that it was not apparent why it was necessary. For if sufficient provision has been made for the “practical” instruction of the faithful, the Holy See, on account of her eminent prudence, is accustomed to defer a formal definition for a long time. Add also that not a few controversies still rage concerning the very just cause of present-day lending at interest, which seems to hinder the definition of principles.

Rev. Fr. Lehmkuhl, vol. 1, no. 1106, supplies this other rationale why the Church should abstain from a doctrinal proposition: the honesty of the present practice depends upon a condition of money that is not, as it were, natural, but adventitious, and that is accordingly *per se* mutable. We did indeed formerly assent to this ingenious explanation; but, after the matter was better weighed, we judge that view to be scarcely probable, nor is it intimated by any word of the decrees, which rather disclose the intention of resolving the moral doubt while leaving the principles untouched.

Cf. what Rev. Dr. Van Roey wrote elegantly concerning this matter, *De iusto auctario* [*On a Just Increase*], pp. 72-77.

Argument 2. From reason. Such is the condition of things today that not only movable but also immovable goods very frequently change owners and can be acquired with money. Businesses and trades which are directed to profitable operations have also grown enormously; and the practice of conducting them even with the money of others has become so frequent that several opportunities are generally at hand for one who wishes to invest monies profitably (*négocier, capitaliser* [to trade, to capitalize]). Therefore, although undertakings not rarely turn out otherwise, there nevertheless exists a common facility, by the aid of money, either to acquire fruitful things or to have a part in profitable businesses. Moreover, the very possession of money procures credit (*crédit*), whose utility is of the highest economic order.

Hence thus:

He who possesses some thing is accustomed to value it from the utility which it will bring him not only in its own species but also in another species. That this can be transferred to fungible things is not ambiguous. Wherefore no one doubts that the possession of money, the more it affords the abundance of acquiring fertile lands or exercising profitable trades, will be of greater value to a man who thinks of becoming rich or conducting business. Therefore, in the fruitful consumption of a fungible thing or its conversion into fruitful things, there is a certain weight worthy of valuation *per se*. So long, however, as those opportunities are rare, or their use is infrequent, this is a special valuation by a few, which does not affect the value of things and accordingly cannot be computed

except by those few who truly deprive themselves of such a faculty. Hence the titles which were called extrinsic. But make those opportunities, as it were, continuously available, so that the knowledge and will to seize them are widespread: the possession of money will now be commonly valued from that economic utility. And, as is evident from the preceding thesis, from common estimation there is generated a value which, adhering to the possession of money in anyone, will be ceded together with it for a time or in perpetuity, and can justly be compensated by an annual price or interest. Indeed, the very form of this price, which is placed in an annual or monthly prestation, agrees well with the nature of things. For the advantages which are commonly expected from possessed money consist in increments which are customarily obtained from fruitful things or trades carried on after stated intervals.

This can be reduced to a few words **in formal terms** thus:

In order that, for a certain condition of the commonwealth, money can justly be lent by all at moderate interest, it is enough that money be commonly valued from the hope of fruitful consumption or from the credit which it procures. For then, from that hope, the possession of money draws a **value** of which the creditor is deprived for a time and for which he rightly demands compensation through interest.

But. Such a condition of the commonwealth can exist, as is evident from present-day facts. **Therefore.**

It is confirmed 1. From St. Thomas, on *Ethics*, V, lect. 9, at the end: “It makes no difference, however, whether five beds are given, or only what five beds are worth.”

2. And the argument is especially clear from **Lessius**, who already in his time proposed an argument similar to ours in order to excuse the merchants who, on the Antwerp Exchange, established a price for being without money. Although he did not dare then openly to approve an opinion which seemed too new, he nevertheless rejects it so gently and answers so weakly the arguments which he himself had first vigorously proposed that he sufficiently manifests himself to incline in mind toward the opinion which we defend. Cf. chap. 20, no. 123-127. “A price can be imposed . . . even upon the burden of being without one’s money for such or such a time. For since money is an instrument of conducting business, and to deprive oneself of the instrument of one’s art is capable of valuation in money, why could not merchants also by common consent impose some price upon being without money? . . . Now, this price seems capable of being exacted by any merchant, even if no profit ceases for him. First, because it is the just price of being without money among merchants; . . . secondly, when a price has been imposed upon some thing or obligation on account of just causes which are commonly present, they can exact it even if such an obligation is not burdensome to me, indeed even if it is advantageous, because it is commonly valued at so much.” Thus also **C. de Lugo**, disp. 25, no. 18, permits even one who was in fact not going to cultivate a field to demand a price for the obligation not to cultivate it.

3. Rev. Fr. Palmieri¹¹ seems to us to embrace the matter in a manner similar to ours:

¹¹ *Opus theologicum* [Theological Work], among the notes, no. 667, 2nd ed.

“It does not matter that someone, either because of his ignorance or because of other circumstances, is not equal to capturing profit with his money; for the value and price of money (as also of other things) depend not upon these contingencies, but upon common estimation and use.

“Therefore, while this condition of society which we have described endures, since the money of anyone is *per se* capable of generating profit and worthy of a certain price for this power, there is no need for individual creditors to consider whether some profit will in fact cease for them if they lend; for, even if they would have kept it idle, nevertheless, when they hand it over as a loan for consumption, it is always true that they hand over a thing which, according to common use, is capable of generating profit and which therefore, according to common estimation (upon which the value of things depends), is worthy of some price.

“This is certainly, among other things, the difference between the present and the former condition of society. The price of generating profit now inheres in money because of the common estimation and common use of men, and therefore is independent of the private condition of the possessor of the money: formerly that price depended only upon the private condition and industry of the possessor of the money. Therefore, it was then necessary to inquire whether profit really ceased for the creditor; now it is licit to omit this special inquiry. To this point also pertain the responses of the Sacred Congregations permitting an increase, even with the title of profit ceasing having been prescinded from—that title, I say, which formerly prevailed.”

376. C. OF THE THIRD PART. *The former severity of the Church and her present indulgence are immune from every accusation.*

A threefold accusation of this kind can be imagined: **error, inconsistency, an unreasonable harassment of business and the arts.**

1. There was no error, either in commending charity or in prohibiting lucrative usury by force of a loan for consumption: this is evident from the first part. At most, it can be said that theologians perhaps noticed the changed economic circumstances somewhat later, and judged certain cases more strictly than was right from true principles but with the fact considered less accurately. This private error, however, which was not lacking in happy fruits, as we shall see, cannot be imputed to the Church, especially since it was not long-lasting and some confusion can scarcely be avoided in those periods which contain a certain and not yet perfect change of morals.¹²

¹² In French we say: *époques de transition* [periods of transition].

2. No inconsistency can be objected, since the very nature of things demands a different solution of the question in different circumstances. This appears clearly from the second part.

As Rev. Dr. Van Roey¹³ very well observes, “we indeed perceive a very great evolution in the application of the doctrine, but no opposition in the doctrine itself.”

¹³ *On a Just Increase*, p. 78.

3. Nor is the third accusation any less easily dissolved. For:

a) **The occasion of the severity was the cruel oppression of the poor and afflicted.** The very arguments of the decrees testify to this. Did the Church harm temporal prosperity when she rescued innumerable men of the lowest order from utter ruin? The distinguished Jannet¹⁴ does not hesitate to say that these laws were plainly necessary for the salvation of the people, and that without them the emancipation of serfs and the liberty of tenants would have been undone. And indeed, in very truth, have we not already seen St. Basil and St. Ambrose (cf. the passages cited above) piously solicitous for small patrimonies and for the very liberty of men?

¹⁴ “Its rigorous application [that of the Church’s discipline concerning usury] was, moreover, in preceding centuries an indispensable measure of public safety. . . . All the fruits of the emancipation of the serfs would have been lost; the great landowners would have destroyed every independence among the populations living around them, as at Rome and in ancient Greece.” *Le Capital, la Spéculation et la Finance* [*Capital, Speculation, and Finance*], chap. 3, p. 80.

b) The Church forbade only this: that, apart from every partnership and every purchase of rent, someone should, from a simple loan for consumption, without labor and without danger, seek an increase from idle money.

Since the Church in no way prevented someone from seeking profit by means of money in true business, by buying, as we would say today, shares, she fostered truly profitable businesses and provoked the ingenuity of men to discover other contracts which would furnish a just title for profit. Hence there arose various more useful forms of contracts by which labor and money were joined in partnership. Hence, according to the testimony of Claude Jannet,¹⁵ contracts of exchange and insurance were practically devised. Wherefore Benedict XIV rightly and deservedly affirmed in the encyclical *Vix pervenit*, proposition IV: “There is no doubt that in those same contracts there is available a manifold licit mode and rationale for preserving and increasing human commerce and fruitful business itself unto the public good.”¹⁶

¹⁵ In a note to p. 296 of the work *Les lois économiques* [*Economic Laws*], by de Metz-Noblat.

¹⁶ Zech, work cited, diss. 3, in section 1, and the distinguished Jannet, *Le Capital*, etc., pp. 85-86, explain well the utility of these contracts.

Therefore, the Church did not suppress the will to profit; but she compelled the possessor of money to seek, by contributing labor and through true business, the profit which he would have captured without his own labor, often by oppressing the needy, if it had been licit to receive interest from a loan for consumption. Wherefore, even if theologians erred in considering the fact and applied the true doctrine with excessive severity, this rather had happy fruits *per accidens*.

c) It is also useful to observe well what difference there is, in safeguarding truth and justice, between ecclesiastical and secular power. The latter looks to the temporal end and the external order and, lest graver evils arise, must often tolerate certain sins. Wherefore the followers of the liberal school will perhaps¹⁷ show that certain civil sanctions enacted against usuries were harmful, but by this reasoning they will by no means establish that it was not in the interest of the commonwealth that notions of equity and justice be efficaciously promoted by the Church in accordance with her office of teaching all truth.

¹⁷ We abstain from that question. We shall note only this: even laws which indiscriminately tolerated usuries ought to have been abrogated in view of the common good. Cf. the imperial edict of Joseph II, December 2, 1803. What of the fact that even today there are some among more recent writers who lament that legal prohibitions were suppressed?

d) From the fact that an immoderate cupidity for profit and riches has generated so many hatreds and so many dangers in present society, these liberal economists will act altogether foolishly if they turn it into an accusation against the Church that she vindicated equity and justice, that she protected the wretched and restrained “the twin plagues of life, excessive desire for wealth and thirst for pleasures.” (Encyclical *Rerum novarum*.)

But if these calumnies sometimes find support among some scholars of these matters who have written with a hostile mind toward the Church,¹⁸ nevertheless, there are not lacking others, even

outside the Church, most learned professors who, weighing the whole matter in a more equitable balance, have pronounced a far different judgment. It pleases us to bring forward here some examples from among them, especially since by various considerations they also illustrate what has been said thus far. And we shall borrow them from professors of England who today have an illustrious name in economics.

¹⁸ Thus, for example, Endemann in the writings cited.

We shall begin with the distinguished Professor A. Marshall, who teaches political economy at the University of Cambridge. Now he has the following:

“We are perhaps apt to lay too much stress on the condemnation by the Church of ‘usury’ and some kinds of trade. There was then [in the Middle Ages] very little scope for lending capital to be used in business, and when there was, the prohibition could be evaded by many devices, some of which were indeed sanctioned by the Church itself.”¹⁹

¹⁹ *Principles of Economics*, vol. 1, bk. 1, chap. 2, § 8, p. 28, 4th ed.

From the distinguished Professor Ashley, who is now dean of the Faculty of Commerce at the new University of Birmingham, and has praise especially as an author on economic history, we borrow these longer passages:

“A modern banking authority, by no means in sympathy with mediaeval ideas or their modern exponents, has nevertheless declared that in what he calls ‘an agricultural semi-barbarous community,’ the money-lender does more harm than good. This was precisely the opinion of the Church; and accordingly it endeavoured to suppress money-lending for gain altogether. The very fact that we hardly meet in the Middle Ages with such instances of oppression of the poor by usurers, as were frequent enough in Modern Europe during the brief period in which there were no restrictions on the usurer’s trade, would seem to prove that on the whole, the combined action of Church and State backed up by popular sympathy, was successful. The mere fact that statutes were passed against usury from time to time, with the usual pessimistic preamble, no more proves that the law was generally broken, than the frequent new criminal laws of modern times prove that all men are thieves and murderers. So long as the conditions remained what have just been described, the Canonist doctrine was but the ‘legal,’ and it may be added, the ethical ‘expression of economic conditions.’ ‘It implies,’ as the German economic historian, Arnold, long ago said, ‘that money had not yet the characteristics of capital.’

“But with the growth of trade and the increase of opportunities for investment, money began to have the ‘characteristics of capital’; it began to represent a force from the employment of which its owner could expect to obtain a revenue, in other ways than by loans for consumption. Trade found out these ways for itself, first and foremost by the practice of partnership; then by the purchase of rent-charges; and again by the employment of loans bearing interest after a certain period of gratuitous use.

“It is altogether misleading and unfair, then, to speak of the prohibition as putting obstacles in the way of the employment of capital. So far as wealth was intended to serve as capital, it found ways open for its employment—ways which were adequate for the time and against which the canonists had not a word to say.”²⁰

²⁰ Ashley, *An Introduction to English Economic History and Theory*, vol. 1, pt. 1, bk. 1, chap. 1, § 17.

The prohibition of the Church, as he himself goes on to say, endured as long as it was necessary for protecting the poor and weak against the rich and powerful.

“The prohibition of usury was clearly the centre of the canonist doctrine. That prohibition, as it is ordinarily interpreted, and indeed as it was actually formulated in some few passages of the Fathers, would have prevented every sort of investment of capital for the sake of gain, except in the owner’s present business. But there was certainly a steady growth of capital and of investment especially in trade, in the later Middle Ages; and for this investment, methods were found which did not conflict with the prohibition of usury, and which one after another received the approval of the Church, either by official declaration or by acquiescence in the judgment of authoritative writers.”²¹

²¹ *An Introduction to English Economic History and Theory*, vol. 1, pt. 2, bk. 2, chap. 6, § 65, p. 395.

These excellent words of Professor Cunningham, who is perhaps second to no one in England in knowledge of economic history, also serve our purpose:

“It is commonly supposed that narrow minded ecclesiastics laid down an arbitrary and unjustifiable rule against taking interest, and that they thus hampered the growth of trade. The rule was not arbitrary, but commended itself to ordinary common-sense and it did not hamper trade. The limits which were laid down in regard to money loans were not so narrow as modern writers appear to suppose, and every encouragement was given to men who could afford it, to make gratuitous loans for definite periods, as a form of christian charity. And it may be confidently affirmed that no real hindrance was put in the way of material progress in the then existing state of society by these restrictions.”²²

²² *Growth of English Industry and Commerce*, vol. 1, bk. 2, chap. 6, § 85, “The Condemnation of Usury” (3rd ed.).

In the same work below:²³

²³ Vol. 1, bk. 3, chap. 5, § 11.

“In so far as the wealth of moneyed men was diverted to usurious dealings instead of being employed in regular trade, there was a danger and not a benefit to society, for money was actually diverted from the directions in which it could be best used for the real advantage of the nation.”

377. III. DIFFICULTIES.

A. AGAINST THE FIRST PART

1. IT IS LICIT TO PROFIT BY FORCE OF A LOAN FOR CONSUMPTION. For:

²⁴ *On the heading above*. Cf. Molina, disp. 304; C. de Lugo, disp. 25, sect. 2 and 2; Ballerini, place cited.

a) **A loan for consumption contains a service rendered to another. But.** No one is bound to benefit another gratuitously.

Reply. *I concede or pass over the antecedent. I distinguish the minor.* No one is bound, that is, he can refuse the service without injury, **C.**; that is, if he wills to render it, he can exact a price, *I subdistinguish*: if it is capable of valuation at a price, **C.**; otherwise, **N.**

Instance. That service is a **benefit**. **But.** A benefit can receive a wage by natural law. **Therefore.** (C. d'Annibale, vol. 2, no. 533.)

Reply. I concede or pass over the major. To the minor, I distinguish. A benefit can receive a wage from gratitude, **C.**; one owed from strict justice, *I subdistinguish*: if it is also burdensome or furnishes something capable of valuation at a price, **C.**; otherwise, **N.** **I distinguish the consequence likewise.**²⁵

²⁵ The distinguished Jannet, *Le Capital*, etc., p. 83, says very well: "The idea of Bentham, Hume, Turgot, and Bastiat, that a service rendered is the cause for receiving interest, would lead to justifying all speculations upon the passions or the embarrassed position of this or that borrower."

b) (Or a new instance.) But. It is burdensome. The availability of money at hand to someone does not exist without a prior self-denial by which one abstained from spending it. **But.** This self-denial is a certain deprivation which receives in interest a just reward or compensation.—The inventor of this title of abstinence²⁶ is an English writer named Senior, whom many thereafter imitated, especially Bastiat, *Harmonies*, VII, *Capital*.

²⁶ *Reward for abstinence.*

Reply. I distinguish the major. Without a prior self-denial formally accepted and made for the good of the debtor, **I deny**; without a certain material self-denial, generally commanded by one's proper and private pursuit—for example, of becoming rich—**I concede. I contradistinguish the minor.**

This objection offends common sense and is deservedly ridiculed by the socialists. Cf. Pesch, place cited, pp. 41-42; Weiss, place cited, p. 673; Antoine, place cited, 1st ed., p. 503, no. 4. At most it could be conceded that, by positive law, insofar as it contributes to the common good to sharpen zeal for thrift, moderate lending at interest is fittingly permitted for this reason.

c) In a loan for consumption, the time for which the debtor can defer payment is always justly compensated. For by it the money lent becomes a present good for the borrower, but a future good for the creditor. **But.** A present good is worth more than a future good. **Therefore.** Thus Böhm von Bawerk, *Kapital und Kapitalzins*, vol. 2, p. 300.

Reply. I deny the assertion; and to the argument, I divide the major. It becomes present for the borrower, **C.** Future for the creditor, *I distinguish*: and at the same time uncertain or with emergent loss or profit ceasing, *I subdistinguish*: always, **N.**; sometimes, **C.**—**To the minor.** A present good is worth more because it is more certain, or is not acquired without expenses, and the creditor is meanwhile deprived of utility, **C.**; otherwise, **I deny.**²⁷

²⁷ "If one 'you have' is worth more than two 'you will have,' common sense says plainly enough that this is because of the risks." Cauwes, *Cours d'économie politique* [Course of Political Economy], vol. 3, no. 886, where he excellently refutes this opinion. Indeed, he adds that it happens that a future good is worth more than a present one, and gives the example of public securities (*fonds publics*) which are presumed to be of increasing value.

We speak of those things which obtain *per se* and in every condition of society. Moreover, if during the interval it becomes a future good, at the moment of payment the money again becomes a present good.

d) The sterility of money must be denied. For the sterility of money is no greater than that of a knife or field, which without the labor of man furnishes neither utility nor fruits. But when human

industry is applied, as, for example, in business, money too is said to be, and is, fruitful. Cf. *Tübingen Quarterly*, 1879, p. 25.

Reply. The parity is denied.

For the primary and objective use of a knife or field preserves the substance with the user and brings either utility or fruits; whereas money *per se* perishes for the user, and its consumption is not of itself (always) fruitful. In particular cases, however, according to the preceding thesis, it must be considered whether the utility is proper to the one ceding the use or to the user. We suppose, moreover, that a contract of partnership is not being conducted. Cf. what is to be said in the immediately following thesis.

e) A loan for consumption contains the obligation not to reclaim the money before a certain time. But. This is always worthy of a price. **Therefore. The minor is proved** from the parity with the obligation of giving a loan for consumption, which is capable of valuation at a price. Otherwise, the stipulation by which a creditor bound the borrower thereafter to return the favor by another giving of a loan for consumption could not have been condemned as usurious. Thus Ballerini, place cited, p. 615, no. 255, and p. 650, no. 323.

Reply. I pass over the major. I deny the minor; and to the proof, I deny the parity. For, besides the fact that the obligation of contracting a loan for consumption, because of the less determinate circumstances of that future loan, more easily becomes burdensome *per se*, it entails an alienation of liberty, which no one ought to admit gratuitously. But the obligation not to reclaim before a certain time is not an obligation properly so called or a personal bond: it is the mere observance of a conceded real right. **But.** It is accepted that a price cannot be exacted for satisfying an obligation already undertaken from justice, or for observing the right of another. Thus, a donor would foolishly exact a price for the obligation never to reclaim the thing donated. Thus, he who speaks is already bound from justice not to violate truth to another's harm: he can be bound by an onerous agreement to speak, but not to refrain from uttering injurious words. Similarly, the act of showing the way is not capable of valuation at a price; but what prevents someone from binding himself from justice, for a price, to perform this office? Indeed, although a donation is essentially gratuitous, it is not repugnant for the promise of a donation to be compensated with money. And, as Molina, disp. 304, observes, for a price you can bind yourself to sell; but, in the sale itself, besides the price of the thing, you cannot exact anything on account of the necessity of thereafter being without that thing. Wherefore the obligation not to reclaim money lent is not formally, as an obligation, capable of valuation at a price, but only from another source, as was explained in the proof. But if you say that some inconvenience inheres *of itself* in the deprivation of money, this is sufficiently compensated by the greater security which the creditor obtains. For we suppose the restitution of the money to be certain. Cf. the proof itself. This difficulty is treated at length by C. de Lugo, disp. 25, sect. 3, but we do not approve his response in no. 24; what he adds in no. 25 pleases us more.²⁸

²⁸ Rev. Dr. Van Roey himself denies that the obligation of giving a loan for consumption is capable of valuation *per se*. *De iusto auctario* [On a Just Increase], pp. 252-256.

2. ONE CANNOT SIN BY USURY UNLESS THERE IS AN ABUSE OF ANOTHER'S NECESSITY. For no injury is done to one who, compelled by no necessity, seeks a loan for consumption, since he is "knowing and willing." *Tübingen Quarterly*, 1869, pp. 409-411.

Reply. I deny the assertion and its rationale.

For, equally as by necessity, someone can be compelled by passion and subjective cupidity to contract a loan for consumption, and therefore equally unwillingly pay illicit or immoderate usuries. Cf. St. Thomas, *On Evil*, q. 13, art. 4; Molina, disp. 304, no. 11; and Zech, diss. 1, § 154. Moreover, the abuse of another's necessity can sometimes be contrary merely to charity, as when, while a needy poor man ought to have been assisted, you do not grant money except at interest which is *per se* moderate.

B. AGAINST THE SECOND PART

1. FROM THE VERY STERILITY OF MONEY the socialists argue against the present-day liceity of lending at interest.

Reply. Money is sterile in itself, but not always in an equivalent or as an instrument of business. Since they in turn deny the latter, it will be demonstrated in what follows (nos. 395-397).

2. FOR THE EXPLANATION THROUGH FRUITFUL CONSUMPTION. As soon as there is fruitful consumption on the part of the borrower, interest can be sought. For they concede that money is then no longer sterile. Therefore, there occurs, as it were, a lease of money. *Tübingen Quarterly*, 1875, p. 220.

Reply. I deny the antecedent. For although money is not sterile for the borrower, it does not follow that it is fruitful for the creditor or in itself. You would say otherwise if the creditor himself had a part in the business by force of a contract and furnished the money in such a way that, as a partner in the business, he should be judged himself to have profitably invested his own money. Cf. Molina, disp. 304, no. 12.

3. THOSE WHO CONCEDE ONLY A PRESUMED EXTRINSIC TITLE argue in various ways.

a) The opportunity of profiting from money was already commonly present even in the Middle Ages, or certainly long before our age; yet theologians did not suspect a just cause for lending at interest other than an extrinsic title.

Reply. I deny the assertion until it is proved. For those skilled in economic science think otherwise. Cf. below, no. 384.

Moreover, in order that the objective value of money to be used may increase, it is not enough that an opportunity for fruitful conversion be commonly available, unless at the same time, from the common knowledge of the opportunity and the will to use it, the facility has entered into common estimation. Cf. what was said concerning value and the function of common estimation, nos. 350 and 350 *bis*.

Finally, what wonder is it if theologians did not immediately from the beginning perceive the changed circumstances and were slow in accommodating their tenets to them? Was there not dispute among them for three centuries (from the thirteenth to the sixteenth) concerning the title of profit ceasing? Now the dispute concerning the universal honesty of lending at interest, which today seems to be drawing to an end, itself took its beginnings two or three centuries ago.

b) **The faculty of profiting from money does not cohere with it as the faculty of habitation does with a house.** For this utility is intrinsic to the house and is always present, whether you

occupy the house or not. On the contrary, the utility of money seems first to arise when you have determined to invest it in a fruitful business. Wherefore, when this will is absent, the utility itself and the cause of just compensation seem to perish.

Reply. *Having passed over the antecedent and its proof, I deny the final inference and the consequent.*

For if you carefully recall what was said above, the goodness or quality of a thing is not sold or let formally insofar as it is intrinsic to the thing, but insofar as those who know it generally will to use it. Therefore, if men commonly preferred to live under the open sky, the utility of habitation would be deprived of value. Wherefore, economically, it matters little whether the utility itself was prior or posterior to the will to use it.

It will be enough if, from present-day circumstances, money *per se* offers to all the faculty of fruitful conversion which men generally will to enjoy, just as a house always offers to one who wills it the opportunity of useful habitation.

c) The faculty of profiting from money is restored together with it. Therefore. By this restitution it is sufficiently compensated.

Reply. *I distinguish the antecedent.* It is restored for the future, **C.**; for the past, **N.** It is not the same for me, for example, to become the possessor of this faculty after a year as already to be so now. For useful conversions succeed one another in a series as it were continuous, which, the longer it is, brings the hope of more abundant profit. Besides, in nearly the same manner you would say that the utility of a house is restored together with the house itself and therefore merits no other compensation.

Article III. Supplements to the Doctrine

I. COROLLARIES

378. With what intention interest is exacted today. Our explanation having been proved, it is licit sincerely to confess what seems consonant with the truth: many of those who today lend at interest wish neither to conduct business nor to purchase some rent, but simply have the will to extend money on credit and to obtain profit from this contract. Cf. Pesch, place cited, pp. 46-48.

This is licit for them because, from common estimation, there inheres today in money the rationale of “capital,” whose even temporary concession has value.¹

¹ Cauwes passed over this in the rationales by which, in nos. 886 and 978, he endeavors to show that the honesty of lending at interest did not always obtain. Possessed money was not always commonly regarded as capital or as a source of profit.

379. A loan for consumption is the proper seat of the sin of usury. From the thesis it follows that by the sin of usury the equality proper to the contract of a loan for consumption is violated, which accordingly will be the proper seat of that sin. A loan for consumption, moreover, is to be understood both formally and virtually, with which another agreement is often mingled, for example, a sale with deferred payment of the price (*vente à crédit* [sale on credit]).

And that the matter has always been understood in such a way that usury was joined with credit of a fungible thing is easily evident to one reading the Holy Fathers and antiquity. We do not know by

what right the distinguished Professor Funk imagines this to be an invention of the Middle Ages.² Jurists and theologians afterward testified with one voice that usury is located in a loan for consumption;³ finally, Benedict XIV solemnly declared it in the encyclical *Vix pervenit*. Cf. above, no. 360, p. 467.

² *Tübingen Quarterly*, 1869, pp. 404-405.

³ Cf. already Henry, Cardinal of Ostia, *Summa aurea*, title *On Usury*.

380. The determination of interest is not rarely said to be made by comparing with each other the probable profit and probable loss which commonly befall one using money in such a place and at such a time. This consideration is nevertheless inadequate, since it neglects that not inconsiderable utility of possessed money by which it procures credit (*donne crédit* [gives credit]). Wherefore, we would prefer to say that *just interest per se stands somewhat below the common hope of returns from possessed money*. We establish interest somewhat below the hope itself because the use of money for conducting business is subject to various dangers, so that the prestation of security which is promised by the borrower must be computed (*prime d'assurance* [insurance premium]).

Interest determined by common estimation can justly be increased by one for whom it is **special**ly important to reserve the use of the money for himself, or at least not to lend it to a debtor whose affairs are in a precarious state. **Special**ly, I say, that is, beyond that danger or that utility which, because it is ordinarily present today in lending money for consumption, has already been computed in common estimation and cannot properly be called an extrinsic title. Cf. no. 366. Besides, this is a perpetual rule of just exchanges. So long as a certain use of a thing is almost proper to the seller, it furnishes a just cause for increasing the common price. But if afterward that use has become common, it will now be compensated by the common price itself, which from that fact will become greater *per se*.

II. SCHOLIA

381. By the name of modern usury some understand all the unjust arts of profiting with which present-day business abounds.⁴ As far as we are concerned, this is indeed licit; but when they think that these frauds and wicked deeds are denounced through the words of the encyclical *Rerum novarum* (at the beginning): “Devouring usury has increased the evil, which, more than once condemned by the judgment of the Church, is nevertheless practiced in the same manner under another appearance by greedy and acquisitive men,” we judge that they wander from the truth. For it would be strange for a foreign signification to be assigned by the Supreme Pontiff to a word whose force is defined by so many ecclesiastical documents; moreover, usury which is condemned by the judgment of the Church was said to have its proper seat in a loan for consumption; but a **new appearance** is easily understood as some new manner of cloaked usury, such as is not rarely practiced when, for the purpose of assisting payment, certain things are sold to purchasers with portions of the price established to be paid in order at individual intervals, which, taken together, excessively exceed the value (*payements par acomptes* [installment payments]). And many other examples could be brought forward.⁵

⁴ Thus, for example, Rev. Dr. Dehon, *L'Usure au temps présent* [Usury at the Present Time], p. 4, pp. 29-30, who thinks that this rationale is already contained in Littré's dictionary, under *usurier*: “This word also applies to one who profits from

the misfortunes or necessities of another in order to enlarge his fortune.” This description, however, accords more with the rationale of usury given by Rev. Dr. Funk: the abuse of another’s necessity from a position of superiority.

⁵ That there are many forms of this kind is testified by the investigations concerning which a public report was made in Parliaments. Cf., for example, Brants, *L'usure dans la législation contemporaine* [*Usury in Contemporary Legislation*], p. 10.

382. The sin contrary to usury, that is, the undue denial of interest, is committed not so rarely today by the rich when they defer, beyond what is licit by custom, the payment of what they owe to small merchants, bring countless inconveniences and losses upon them, and do not think of compensating them in any measure, even by moderate interest.⁶ St. Antoninus already censures an inequitable delay, *Summa*, pt. 2, tit. 1, chap. 17, § 7.

⁶ We attempted to write more precisely about this argument in *Bien Public*, February 9, 10, 11, 1900, under the title *Les dettes criardes* [*Clamorous Debts*].

383. As patrons of our opinion we can enumerate several theologians or economists: Rev. Fathers Lehmkuhl, Pesch, and Antoine, of the Society of Jesus, works cited, whose explanation is very similar to ours.⁷

⁷ Indeed, Charles Gide does not seem foreign to this rationale, on account of what he has in the work *Principes d'économie politique* [*Principles of Political Economy*], bk. 4, pt. 2, chap. 4, § 4, pp. 576-577.

We judge, however, contrary to the opinion of Rev. Fr. Lehmkuhl, that one who today lends money still truly makes a loan for consumption. For a loan for consumption is made because what is granted is, indeed, not a sterile thing, but a fungible thing, such as money is and remains. Nevertheless, we do not therefore permit interest by force of the loan for consumption, since we argue from common estimation, which rests upon a rationale not contained in **every** loan for consumption, but adventitious from present circumstances.—Likewise, since we deny that a strictly so-called obligation is undertaken by the creditor, we approve still less that formal explanation by which Rev. Fr. Pesch says that interest is the price of that obligation and that a loan for consumption is a bilateral agreement, although we grant him that being without money is today capable of valuation at a price.

384. From what time has it been universally licit to lend at interest? As generally happens in similar matters, someone could scarcely calculate the time at which the vicissitudes of things became such that they attributed objective value to the act of lending money. Certainly, in the Middle Ages, when ecclesiastical laws were enacted, the conditions were not yet such; nor did Benedict XIV recognize that they were already such, although perhaps they then existed in certain cities, but not likewise in villages. In our century, however, after all restraints were loosened to unbridled cupidity and, on account of the abundance of means of transport, the greatest similarity of the conditions of life was introduced everywhere, this state, not happy in every respect, was reached very rapidly. Cf. Pesch, p. 71, in the note.

It is useful to recite certain opinions of economists concerning this matter.

“Now, speaking generally, it may be said that during the period *from the eleventh to the fourteenth century*, there was but a very small field for the investment of capital.”⁸

⁸ Ashley, *An Introduction to English Economic History and Theory*, vol. 1, pt. 1, bk. 1, chap. 1, § 17, p. 155.

“After the conclusion to which we have just come as to the character of capital, we may perhaps draw out the case in favour of the canonist doctrine in some such form as this. In the

later days of the Roman Empire the power of the creditor over the debtor was often so harshly abused that the Fathers, moved by a natural reaction, urged the faithful to abstain from so dangerous a trade, and when they lent at all out of compassion, to lend asking nothing in return save the loan itself. But so long as capital needed to be borrowed for purposes of trade, it would have been unwise to insist that all men should follow their advice. Accordingly, no attempt was made to enforce the rule by ecclesiastical penalties on any save the clergy; it was a counsel of perfection, and it would have remained a counsel of perfection only, had not economic conditions changed. This would seem to be shown by the fact that in the Eastern Empire no permanent restriction was placed on the loan of money beyond the limitation of the rates by Justinian, and the Eastern Church acquiesced in the license given by the secular law.⁹ But in the West the barbarian inroads for a time caused an almost entire suspension of commerce; and though in some Italian and Gaulish centres there was never any absolute break in the life of trade, there was *a period of some centuries* during which it played a very insignificant part in social activity. Agriculture was the all-important occupation—and agriculture carried on for the supply of the wants of each group of producers themselves, and not for the market where money was borrowed, it was in the vast majority of cases, not for what is called productive expenditure, but for consumptive; not to enlarge the area of tillage, or to invest in trade or industry, but to meet some sudden want due to the frequent famines or to oppressive taxation or to extravagance. The money that was lent, was money for which it would otherwise have been exceedingly difficult to secure an investment.”¹⁰

⁹ We would not wish to judge definitively here concerning several things which are asserted in this passage.

¹⁰ Ashley, *An Introduction to English Economic History and Theory*, vol. 1, pt. 2, bk. 2, chap. 6, § 71.

“The conditions of business in the fourteenth century were such that banking operations were very circumscribed. Though bills were used for the transmission of wealth, there is a striking difference between those times and ours in the absence of commercial credit as a basis for transactions of other kinds; there were no bank notes or cheques or other instruments of credit. We must remember that transactions were carried on in bullion: men bought with coins and sold for coins: loans were made in coins and repaid in coins; a special coin was struck for payment to foreign countries, and thus the whole currency was metallic. There was no paper circulation of any kind; this continued to be the case for practical purposes till the latter part of the *seventeenth century*. Dealing for credit was little developed and dealing in credit was unknown; hence there was no room for a large part of the functions of modern banking.”¹¹

¹¹ Professor Cunningham, *Growth of English Industry and Commerce*, vol. 1, bk. 3, chap. 5, § 11, p. 362.

385. Concerning rents and the triple contract. Once the rationale why interest is not to be admitted in a loan for consumption of itself has been well perceived, it appears readily enough that usury is not committed by one who, by means of money, has procured for himself the right of receiving a part of the fruits from a fruitful thing, or who, by force of a contract, has joined money with business. And for this reason many theologians defended the purchase of rents and the triple contract. Concerning these things very briefly.

1. A rent (*census*) designates an annual return from a fruitful thing. Now, both natural things and human industry are fruitful. Hence a **real rent**, which regards a definite fruitful thing of another, for

example, a field or meadow; and a **personal rent**, which regards the works of another indefinitely. He purchases a rent who acquires the right of obtaining annually from the thing or works of another a certain profit or payment; and he is called the **rent-holder** (*censualista*), while he who must pay is called the **rent-payer** (*censuarius*). That right can be acquired either by the payment of a certain sum or by the transfer of the field, meadow, or fruitful thing itself, with the transferor reserving a right to a part of the fruits. Wherefore, this rent is called **reservative**, while the former is **designative**, in which the fruitful thing affected by that quasi-servitude is merely designated.

A rent is **redeemable** on one side or on both if, when either party wills it, the obligation of annual payment comes to an end through the payment of a single far greater sum. Otherwise, it is **irredeemable**.

An agreement concerning a **real rent** was solemnly approved by Martin V and by Calixtus III, chapter *Regimini universalis Ecclesiae*. Concerning a **personal rent**, especially a redeemable one, there was greater doubt; indeed, on account of the danger of abuses, this contract was prohibited by the constitution *Cum onus* of St. Pius V; that prohibition obtained only in Italy.

It is not to be denied that this contract can easily be stained by a usurious intention, or that in fact usuries can be exacted if an excessive rent must be paid; but of itself the contract is immune from that stain, provided that: **α) The rent is truly founded upon a fruitful thing.** Therefore Sporer says that it is “most certain among all” that an industrious person capable of profiting is required; **β) The annual sum is moderate**; and, if the purchaser enters into no risk or can dissolve the contract, it is diminished in just proportion on account of these causes.

Sporer excellently proves this liceity, tr. VI, *On the Decalogue*, chap. 6, nos. 16-24.

2. The triple contract. It was a contract of partnership by which, for a certain business profitable in hope, one party contributed labor and the other money; the latter, however, at the same time avoided by a double insurance the double risk which by force of the prior contract he ought to undertake. For in place of uncertain profit a lesser but certain profit was promised to him; and the danger to his principal, with the profit reduced further, was transferred to the other contracting party. Authors disputed whether it was licit to enter into that threefold or triple contract with one and the same person; and, on account of the great danger of abuse, this form of agreement was condemned by Sixtus V in the constitution *Detestabilis avaritiae*, 1586. In itself, however, provided that the fixed profit is exacted according to a just norm, it seems to contain nothing contrary to natural law.

By these and similar contracts someone could formerly invest money usefully and justly. Nor should you think that in this manner the matter falls back into vain subtleties. For those contracts could not be made unless a fruitful thing or profitable business was at hand, besides someone who was willing either to cede a right to receive the fruits of his field or industry, or to admit a partner into the business.

Therefore, those err and have not sufficiently perceived the true rationale of the dishonesty of profit sought from a loan for consumption who think that theologians were compelled as though by necessity to excuse contracts which *per se* would have been repugnant to their own severity.

Question X: On the Letting and Hiring of Labor

Overview of the Question

386. Arrangement of the question. That principal modern question in which the mutual relations of workers and employers must be defined seems to us to embrace chiefly three parts, which we shall treat in as many chapters. Accordingly, we shall speak in order:

1. Of the form of the contract by which labor is promised;
2. Of its justice, and particularly of a just wage;
3. Of the consequent relationship, or of the mutual duties of the employers of a business and the workers; to which chapter
4. We shall append the minor question concerning those pacts and agreements by which, as the encyclical *Rerum novarum* says, workmen “by concerted action cease from work” and imitate a certain secession of the plebs. These will be called by us, in one word, work stoppages (*operistitia*).

387. In what sense we speak of the form of the contract. Lest, from an intention wrongly understood, we seem at the outset to incur some censure, it is useful to explain accurately what, in the first part, we call the form of the contract. For the form of a contract can designate whatever either constitutes or follows upon the contract; or, if you prefer, together with the consent itself, whatever right and duty arises from the consent or on the occasion of the consent. Or it can be taken more strictly for the very kind of stipulation and, as it were, its first essence. Then nothing is considered except the object of mutual consent and the effects of which consent is the immediate cause. Thus a deposit and the hiring of a thing entail some care of the thing, which nevertheless does not belong to the form or essence strictly taken, but follows upon both kinds of stipulation.

Now we take form in the first part in this latter and restricted manner; that is, we consider the contract *in fieri* [in its being made], and not *in facto esse* [in its completed state]. For an adequate account of the contract¹ can be proposed only at the end of the question.

¹ Thus in French they are accustomed to discuss more broadly *du contrat de travail* [the labor contract].

Chapter I: On the Form of the Stipulation of Labor

Liberatore, *Principii di economia politica* [*Principles of Political Economy*], pt. 1, chap. 2, art. 6, and pt. 2, chap. 5, art. 2; Antoine, *Cours d'économie sociale* [*Course of Social Economy*], chap. 11; Lehmkuhl, *Arbeitsvertrag und Strike* [*The Labor Contract and the Strike*], translated into French by D. Fritsch under the title *Le contrat entre patrons et ouvriers et les grèves* [*The Contract between Employers and Workers and Strikes*]; De Gryse, *De contractu conductionis* [*On the Contract of Hiring*]. And, on the opposing side, K. Marx, *Das Kapital* [*Capital*], vol. 1, chap. 1, at the end, and chap. 5 (chaps. 1 and 7 of the French edition).

Article I. Preliminary Notions

388. Various opinions concerning the genesis of value. There has been no less dispute, and manifold error, concerning the genesis of value than concerning its nature. We shall briefly review here the various opinions that have found favor in this matter; they are closely connected with the conclusion to be handed down.

For a long time, especially in the sixteenth and seventeenth centuries, statesmen were deceived by this error, which manifested itself more in deeds than in theories: they placed the wealth of a nation in an abundance of money. The value of money varies according to the quantity of things that can be obtained by means of it, so that it has the common character of other merchandise. Therefore, they said that where gold mines or silver mines were lacking, commerce and those arts by which the value of things is increased were to be favored; and that care was to be taken through laws, and particularly through customs duties, that the sum of things sold exceed purchases. This opinion greatly harmed Spain; and because Colbert, minister of King Louis XIV, defended it in France, it was called in French *Colbertisme* [Colbertism]. It is also called the *Système mercantile* [mercantile system].

As if from the opposite side, Quesnay, physician to Louis XV, attributed to nature alone the power of increasing value, since the arts added nothing to the stock of things already existing. Therefore, he said that agriculture and the fostering of pastures were especially to be favored. That system is called the agrarian system; its patrons, however, are called Physiocrats, or also Economists, because scientific method then first began to be applied to these matters.

This theory was succeeded by the doctrine of Adam Smith, who taught toward the close of the eighteenth century and is regarded as the father of the economic school which is called classical, or also liberal, because its adherents began to proclaim complete liberty of labor, commerce, and so forth, from which, with zeal for gain and profit impelling men's minds, they hoped for the greatest temporal happiness of peoples. Their formula is famous: *Laissez faire, laissez passer* [Let things be done, let things pass]. Those who today belong to this family are sometimes called orthodox. Now Smith attributed such a principal role in acquiring wealth to human labor and industry that there were afterward some who ascribed every new value to labor as its sole cause. The system of the liberal school, to which many still adhere, is also distinguished by the other name of Industrialism.

Moreover, that the whole power of generating value must be referred to human industry alone as its adequate cause could not fail to please the socialists. They contend, besides, that as much of the fruits which *per se* belong to the workers is taken away from them as accrues from profitable business to those who have contributed money. Cf. no. 176, p. 193, and no. 343.2.

389. On wealth and capital. 1. The word **wealth** has a broader extension among economists than among the people. For while, according to common popular usage, only those who abound in resources are called wealthy, things which are capable of valuation at a price are already, individually, designated by experts in economics with the name of wealth.

2. They are accustomed to subject two kinds of things to the word **capital**, according as it is used properly or metaphorically.

a) Properly. Not even then is there one meaning of the word. But:

α) In the broader acceptance, any things capable of valuation at a price, or any wealth destined for profitable use, are called capital goods. Thus natural goods and powers (*agents naturels* [natural agents]) are understood in addition to those already acquired by another exertion of men,¹ and capital is opposed only to labor or human industry. And it is in this sense that we take the word in the present matter.

¹ Nevertheless, because the powers of nature do not ordinarily effect anything separately, and almost every kind of wealth demands at once the conjoined operations of men and nature, some wealth is therefore called natural and other wealth artificial, not because the former is the offspring of nature alone and the latter of art alone, but because the former offers utility in its natural species—gold, animals—while the latter offers it insofar as changed by art—various machines, garments.

β) In a stricter sense, capital designates a thing acquired by prior labor and assigned anew to the generation of wealth. In this manner a field, for example, is not capital insofar as it is naturally fertile, but only insofar as by human industry it has acquired greater fruitfulness. Hence they then distinguish, in a profitable business, nature (*les agents naturels* [natural agents]), labor, and capital (*richesse épargnée en vue de la production* [wealth saved with a view to production]).

Moreover, they distinguish this capital into **fixed**, or permanent or immovable, which comprises buildings, instruments both inanimate and animate, the acquired fertility of the land, and whatever is not consumed in the very genesis of value; and **mobile**, or transitory (*circulant* [circulating]), which is consumed by the business: material to be transformed (*matière première* [raw material]), things produced but not yet sold, and food procured in advance and the other things sufficient for sustenance and incidental expenses. These latter are often represented by money and constitute the money to be kept in circulation, *le fonds de roulement* [working capital]. Sometimes this money more especially retains the name of capital.

b) Metaphorically, in an entirely different usage, capital today not rarely signifies sums of money, claims, and securities (*titres de rente, créances, actions* [rent securities, claims, shares]) which are bought, sold, and exchanged, insofar as they confer an annual return upon their possessor.

In the former manner a **capitalist** is one who possesses an estate or the instruments of industry; in the latter, he is one who possesses certain active rights or claims.

And the word **capitalism**, adapted to either sense, signifies either the prevalent use of machines in producing things, or the very great importance which securities of this kind have today. These, indeed, are assembled in great quantity by skillful and not always honest arts and then sold off, so that men may abound in wealth without labor and themselves exercise very great influence in society.

390. On partnership. This contract has as its object that two or more persons contribute a thing or labor to a community of use, or especially of profit. It therefore contains some community of the thing or business, and consequently of risk and profit.

Nevertheless, a partnership can be entered into in various ways. For either a perfect community of risk obtains among the partners, or, by a certain insurance, the risk, either adequately or inadequately, is transferred to some of them, to whom this hazard is compensated by different advantages. Accordingly, the fact that a worker receives a fixed and certain wage does not prevent his being admitted as a partner. For the wage will be fixed if the manufacturer, for example, provides the worker a twofold security: by paying him the stipulated sum, he removes from him the danger of

losing as it were his principal—his labor-capital (*capital-travail*)—and, in place of an uncertain profit, promises him a smaller but certain one. Provision can be made for these things even in the case of a partner by entering into the contract which they call triple. Cf. above, no. 385. But if the one who is master in the partnership enters into that hazard only inadequately, there will fall to the worker, besides the predetermined part of the wage, another part which will vary according to the profit.

Partnership, therefore, will be indicated if the portions which fall to each person are defined, not from the common price of the thing or labor which is contributed according to a universal rationale, but from the proper rationales of the business being conducted, whether they are estimated beforehand from expectation or from the outcome after the business is completed.

391. On letting and hiring. By this agreement one party (the letter) promises to the other (the hirer), for a definite price and for a definite time, the utility of a thing or a person. Therefore the letting of things is distinguished from the letting of labor, which concerns the labors of a human person. In this contract, therefore, the worker remains alien to the ownership and fruit of the business, so that those things which, according to justice strictly so called, he can acquire for himself through the business are circumscribed by the just price of the labor let.

From the letting and hiring of labor strictly understood, distinguish the **letting of a work**, that is, an agreement by which the worker promises not so much labor as a work to be effected by his industry or labor. Then the worker himself rather hires or undertakes, by taking it upon himself, a definite work which another commits to him to be performed and as it were lets or sells. Therefore, if we attend to the proper force of the words, the worker is called the hirer, the contractor for the work (*redemptor operis*), and he who promises the price is called the letter.

In factories they are now accustomed to approach this rationale of contract,² when the wage is determined not so much from time (*travail au temps* [time work]) as from the quantity of things produced (*travail à la pièce* [piecework]).

² They approach it, I say; for it is generally only an indirect manner of valuing labor, by which the diligence of the workers may be stimulated.

392. Economic, industrial, and civil fruit. **Economic fruit** is temporal profit made by labor or capital. It is **industrial** if it is gathered by a partner in the business, but **civil** if it is the price of a utility granted to another, that is, of a thing or industry that has been let.

The enjoyment of the thing itself transcends the economic order.

Article II. Formulation and Arguments of the Conclusion

THESIS XXVII

The profit to be made from a business belongs per se, proportionately, both to him who contributes labor and to him who furnishes capital.

Nevertheless, some form of partnership between the employer and the workers, although per se more perfect and more consonant with the equal dignity of the human person, is not the only just form of contract; rather, a true letting of labor is also honorable in itself.

393. I. State of the question. 1. THE INTENTION OF THE THESIS is that in the first part we establish among whom profit acquired by human industry is to be divided when every agreement is excluded; and, in the second, what species of agreements are approved or even preferred by nature in themselves. **In themselves**, I say. For a form which is better *per se* can be impeded by many difficulties. Therefore we pass over this other question concerning the use of the better form: whether there is an opportunity or even a universal possibility of introducing it.

2. THE TERMS ARE EXPLAINED.

The profit to be made from a business, or the economic fruit for the acquisition of which a man must in some manner expend his labor. This, morally speaking, is always required, since no property is acquired, at least, without occupation. The word **business** is therefore taken broadly. We in no way circumscribe the thesis to those fruits which are strictly called industrial, because in generating these the labors of men have the principal part.

Moreover, by the name of **profit** we understand an increment of value, *la plus-value*, *le produit net* [surplus value, net product]. Therefore, both classes of persons can claim not only as much as they have contributed—which no one denies—but, if the affair has prospered, more than they contributed.

Per se. For both a just agreement and a social ordinance can change these things. Thus slavery legitimately introduced deprives a servant of ownership of his labors, and consequently of every portion of the profit.

Proportionately, which is to be defined from quantity, quality, and efficacy according to common estimation, and, insofar as this is lacking, according to an agreement freely made. This we can call proportionately to merit.

To him who contributes labor. We understand both labor which is exercised by the body and labor which pertains to the intellect, or by which the business is conceived, ordered, and so forth.

And to him who furnishes capital. Take **capital** properly, though not strictly. Cf. no. 389.

Nevertheless, some form of partnership. We gave the various modes in no. 390.

Between the employer. Understand by this the one who seeks the aid of another's labor, especially for conducting a business profitable in hope, of which he has the principal care (*le patron* [the employer]).

And the workers. Here we understand especially those who offer their labor as servants or workmen.

Although per se more perfect. In French one would say, *répondant mieux à l'idéal* [corresponding better to the ideal]. Therefore, we pronounce nothing concerning its practical opportunity. Indeed, it is sufficiently evident that, at least today, it cannot be introduced universally.

And more consonant with the equal dignity of the human person, by reason of which men are not subordinated, but coordinated toward the same end.

Is not the only just form of contract. We understand commutative justice.

Rather, it is also honorable in itself, insofar as it is not procured by any evil arts.

A true letting and hiring of labor. Cf. no. 391.

3. OPINIONS. The socialists oppose both parts of the thesis, since they think that a portion of the profit falls unjustly to capital and reject the alienation of labor such as the contract of letting establishes.

Catholics will deny neither the first part nor the general and tempered assertion with which the second part begins, except that, according to the various studies by which they are led in dividing the fruit, some will favor capital or administration more, others the labor of the workmen more; and some will more readily commend the form of partnership than others. The latter assertion, however, concerning the honorableness of a true letting of labor, seems less pleasing even to certain Catholic men. For, in a conference concerning the social question which Catholics from various nations held in June 1882 at the castle of Haid in Bohemia, they judged the contract between workers and employers necessarily to be a contract of some partnership; and, at the same time, that justice required that the wage not remain below the sum sufficient for the sustenance of the worker and his family, and that account be taken of the profit received from the business. From what will be said, it will readily be evident that these two things can scarcely fail to conflict.¹

¹ The “social contract,” which bears the name *contrat de Haid* [contract of Haid].

II. Proof.

394. A. AS TO THE FIRST PART. The profit to be made from a business belongs *per se*, proportionately, to him who contributes labor and to him who furnishes capital.

Praises, rewards, and advantages received from some thing commonly belong *per se* to those who are the moral cause of the thing. From the personal equality of men, however, it follows that the distribution must be made proportionately to merit.

But. Those who deliberately, and with the intention of contributing to the generation of value, furnish either labor or capital are the moral cause of the new value effected.

Therefore. Profit falls to each proportionately to merit.

To the major. For, in the present argument, a moral cause is that which, through a human act, procures something which either contributes to the effect or is at least required in order that the effect can be had. The effect is therefore imputed to it.² Imputation, moreover, signifies the merit of praise, worthiness of reward, and the acquisition by occupation of a thing which can become one’s own. Therefore, to whom the moral efficacy of a thing of this kind is ascribed, to the same the ownership of the thing itself is denied by no one. This is so true that some have placed in labor the primordial fact by which things become one’s own. Cf. no. 213.

² Cf. Schiffini, *Principia philosophica* [*Principles of Philosophy*], no. 613.

To the minor. He who furnishes labor furnishes that which has the character of a principal efficiency with respect to new value. For because value is not so much a thing in itself as a thing actually useful, to generate value is not only to increase the stock of things, but also to confer actual new utility upon existing things. Now the physical labor of human industry does this, whether it extracts things hidden in the earth (*industrie extractive* [extractive industry]); or, by employing the powers of nature, usefully changes things, for example, weaving cloth from thread (*industrie manufacturière* [manufacturing industry]); or conveys things to him who will use the thing (*industrie commerciale*

[commercial industry]). Intellectual labor likewise does this, whether it exercises the principal roles of prudently directing physical operations, or is comprised in the secondary cooperation of clerks.

The causality is principal because a man moves himself and applies himself to the work.

He who furnishes capital, according to its various elements, either furnishes an instrument of working,³ which, although a moved mover, possesses a distinct power; or furnishes matter from which, to which a certain material causality belongs; or furnishes some positive assistance, whether food by which the agents are disposed, so that it can be said, “the cause of a cause is the cause of the thing caused,” or a place where the industry is exercised, and so forth.

³ Those instruments are rightly called fruitful both when they help to produce the things themselves or to adapt them to human uses, and when things are conveyed by means of them. Thus, in substance, Rev. Fr. Lehmkuhl, *Theologia moralis* [Moral Theology], vol. 1, no. 1901.

The same is evident indirectly as regards capital, because, when capital is removed, the efficacy of human industry is, as it were, immeasurably diminished. This is confirmed by daily experience, so that now they say, for example, that certain arts are pressed by no other necessity more than by that of capital supplied on credit (*le crédit* [credit]).

395. B. AS TO THE SECOND PART. 1. Some form of partnership between the employer and the workers is of itself more perfect and more consonant with the equal dignity of the human person.

For when this is introduced, a man immediately employs his own powers for his own good, and is not subjected to another as regards the use of his person.

But, per se,

- a) This is more congruent with the natural condition of men;
- b) It fosters industry and diligence more;
- c) It more firmly establishes the observance of personal equality.

Therefore, per se, this form is more perfect, and so forth.

To the major. For by this form of contract each person immediately gathers, proportionately, the fruits of which he is a partial cause; he expends labor for himself; whereas, in the other contract, he cedes the right which he has to the fruits of his own labor. If the employer and the workers have been joined in partnership, both are engaged as equals in the same business.

To the minor. a) Nature made the faculties and powers of each person his own, and consequently their fruits. This order is preserved in the contract of partnership.

b) The hope of one’s own utility is accustomed to add incentives and spirit to us.

c) Because we are inclined perversely to use any superiority, we shall certainly more securely reverence the personal equality of those who, with no subjection previously introduced, as independent persons conduct with us the same business and pursue the same end, than that of those who by the very agreement are made inferior to us.

2. A true letting of labor is not only a just form of contract, but is also honorable in itself.

Argument 1. This is proved directly: a) **Both from the consensus of theologians**, who placed human labor among the things capable of being let. This was so evident to Molina, vol. 2, disp. 489; Lessius, chap. 24, no. 1; C. de Lugo, vol. 2, disp. 29, nos. 1, 54; Sporer, tr. 6, *On the Decalogue*, chap. 7, sect. 2, no. 17; St. Alphonsus, bk. 3 (4), no. 857; and so forth, that without circumlocution they defined the contract of letting as: a contract by which a thing or person is conceded for use. And already in the thirteenth century Robert de Courçon, in the work *De contractibus* [*On Contracts*], inscribed a title *De locatione operarum* [*On the Letting of Labor*].

b) **And from reason.** They concede that a man has beneficial ownership of his body, powers, and faculties. But ownership can *per se* be sold or let. By what means would an exception be proved?

Not by the fact that the fruits fall essentially, proportionately, to everyone who has had some part in generating them; for otherwise neither the owner of a field nor the possessor of money could concede them for use at a definite price. Nor by the fact that this contract introduces a relation of subjection; for nature itself necessarily willed many men to be subject to others, such as a son to his father and a subject to his prince.

Argument 2, indirect. 1. If the adversaries spoke the truth:

a) Contrary to the received doctrine, all servitude would be essentially evil. For this contains not only a letting, but an alienation of labor.

b) The passages of the Old Testament in which there is frequent mention of and legislation concerning male and female servants, but no reprobation of their condition, could scarcely be explained.

c) The practices of all peoples, among whom the form of the contract of partnership has never prevailed, would have to be condemned.

d) As soon as a borrower expended money profitably, he would have to cede a portion of the profit to the creditor. This cannot in any way be reconciled with ecclesiastical documents.

2. Moreover, when someone uses another's labor for nonprofitable affairs, for example, in many things which servants furnish, under what form, unless some form of letting, could the agreement be made? And even in affairs fruitful of themselves, for example, in a house to be built, how will you estimate the proportionate part which belongs to the secondary workers who carried the bricks, assisted the masons, and so forth? Cf. A. Verhaegen, *Le Minimum de salaire* [*The Minimum Wage*], p. 21.

396. III. Difficulties. A. AGAINST THE FIRST PART.

They have almost been removed.

1. They generally contain a begging of the question, as when they say that the moneyed live upon another's labor. For they tacitly pretend that value is generated by labor alone. But if it is otherwise, you could equally well say that workers live upon another's money. Yet things have certainly been so constituted by nature that each is sustained by the legitimate fruit of an operation in which one has aided the other, although in a different manner.

Nor may you reply that a great part of capital, for example, raw material, is merely "passive"; for, passing over the fact that natural powers are also present in it, did not its possessor have to act both to preserve the things and to furnish them usefully to the workman?

2. K. Marx argues approximately as follows (*Das Kapital* [*Capital*], chap. 5). After saying that it was a mystery why raw material increased in value after it had been worked, he offered this explanation of the matter: that more labor had been expended upon it. But since the workman generally procures his daily sustenance for himself after six hours and nevertheless works longer, no wage is given to him for the remaining labor. The increase of value, therefore, is a definite quantity of labor whose price is paid not to the workman but to the “capitalist,” who is thus the “parasite” of the worker. These things, however, have already been refuted by the thesis concerning value. Cf. nos. 341–343. For the present it will suffice to recall that this conclusion contains two things wholly foreign to the truth:

a) That the value of every thing is estimated by the quantity of labor universally necessary for perfecting the thing. Cf. no. 343.2.

b) That a wage is exacted according to the measure of the workman’s necessary sustenance.

But as regards the mystery, when a thing that has been changed becomes of greater use, what wonder is it if it is valued more highly and consequently has a greater price?

B. AGAINST THE SECOND PART.

1. To one who works there necessarily belongs a right to those things which he produces, just as an effect is ascribed to its cause. Therefore, an innate right to a proportionate part of the fruits inheres in the worker.

Reply. I concede the antecedent; I distinguish the consequent. Unless he has sold or let the labor itself, C.; otherwise, N.

Once that letting has been made, the worker ought no longer to receive proportionately the industrial fruit of his cooperation; rather, it is sufficient *per se* that the wage correspond to the profit which labor of that kind is commonly capable of generating. Cf. the following thesis. We therefore resolve the difficulty otherwise than those who attempt to prove *ad hominem* that by the wage itself it comes about that the worker obtains *per se* the whole fruit of his labor. Thus, for example, P. Leroy-Beaulieu, in the article inserted in Say’s *Dictionnaire d’économie politique* [*Dictionary of Political Economy*], under *salaire* [wage], 6.

2. This alienation itself is repugnant to justice.

Reply. I deny it until it is proved.

For many causes that absolute equality, by which one person owes nothing positive to another from justice, is altered without justice being in the least repugnant to this.

Article III. Supplements to the Doctrine

I. COROLLARIES

397. The true origin of new value. Therefore, *new value arises immediately from the industry of men, who generally labor usefully with the aid of capital upon a thing furnished by nature.*

But just as Quesnay erred when, confusing **new things** and **new value**, he asserted that the land alone, because it alone generates things, was the source of wealth, and perhaps did not attend

sufficiently to the fact that this very fecundity of the soil is increased by human labor, so the socialists err when, considering especially that no fruit is had without the labor and industry of men, they omit to observe what is added to the power of human labor by capital. They are also deceived when they reduce every causality to the immediately efficient cause alone.

Nor without reason does Liberatore, work cited, nos. 39–41, censure the usage by which economists are accustomed to enumerate three efficient causes of wealth: natural things (*agents naturels* [natural agents]), capital—in the stricter sense; cf. no. 389—and human labor. For these three possess neither an equal necessity nor a similar causality. Capital in the strict sense is required less absolutely, for since capital itself is the fruit of a prior efficiency, the first businesses or works had to be undertaken without capital. The causality of the three is dissimilar: for while efficiency properly so called must be ascribed to the powers of nature and to human labor, capital possesses only material causality, or at most instrumental causality, or the rationale of some necessary assistance. Cf. no. 394. Nevertheless, Liberatore is in no way opposed to our conclusion, which he himself defends in pt. 2, chap. 5, art. 2.

Finally, there is no reason why we should take capital so strictly that it does not contain natural things, unless you wish again to fall into that error¹ by which the powers of nature were said to be furnished gratuitously and not to become one's own.

¹ Carrey, Bastiat, and Henry George were deceived by this error. Cf. no. 181 at the end, and nos. 200–201.

398. In what manner money belongs to capital. Money, as Rev. Fr. Weiss observes, *Soziale Frage* [*The Social Question*], vol. 2, p. 700, does not as such become capital, but only in the equivalent which is obtained by means of it and to which there belongs either natural fecundity, as to an estate or manual labor, or instrumental fecundity, as to machines. In this manner, therefore, it produces industrial fruit.

399. St. Thomas agrees with us, *Summa Theologiae*, I–II, q. 114, art. 1. For since there is no price except of a thing sold or let, he tacitly concedes the letting of labor by describing a wage: “That which is recompensed to someone in return for a work or labor, as a certain price of it.”

400. The option permitted to one undertaking a business. One who wishes to attempt something and needs either another's money or another's labor is not compelled *per se* to admit anyone as a partner, just as the latter are not bound from justice to consent to a loan or to the letting of labor. But such will often be the condition of affairs that a worker, who would provide for himself in vain in another manner, accepts the inferior condition and lets his labor.

II. SCHOLIA

401. The mutual roles of managers and workers. While some unjustly disparage too greatly the persons of the administrators, to whom the first place must undoubtedly be accorded, others, by a certain contrary error, seem to acknowledge almost no merit of the workers in a business successfully conducted.

But just as, without prudent administration of the business, the industry of the workmen would be of little avail, so the one who is master in the partnership needs suitable workers; and even now it is of no little importance which men are assigned to operate the machines. Moreover, from the parts of the work being divided among many, it comes about that each person, being more attentive to his own part, acquires greater skill for himself. Therefore, so long as the contract is one of true partnership, a

twofold reason forbids you to ascribe any profit to one party alone, for example, to the manager: **a)** Because the things which he has devised will bring no fruits unless the workers have diligently attended to their execution. Cf. Cauwès, no. 799. **b)** Because that art of better managing affairs and selling merchandise is due, at least in part, as to a mediate cause, to the activity of others. Therefore these things cannot be neglected in a just estimation.

402. On rewards and a portion of profit granted to workers.² Once a true letting of labor has been made, provided that the justly agreed wage is paid, nothing of the profit, even if immense, is due *per se* from justice to the workers. But it will be equitable that they receive something moderate, especially if the profit has increased beyond what is customary.

² Cf. concerning these matters our other work, *Manuel social* [*Social Manual*], pt. 2, vol. 2, § 5, p. 349 ff. (1st ed.).

Accordingly, this manner of remunerating is of no little profit for fostering peace and the mutual friendship of the various orders.

Moreover, it is accustomed to add incentives to wage-earners so that they labor energetically. Therefore, in not a few factories rewards for diligence or fidelity are established, which the workers merit either from the quantity of things, from the quality of the works, or from the very length of their service. Lest they become an occasion of complaints, it is necessary that the cause and manner of the estimation be easily and clearly evident.

Also greatly celebrated today is that kind of institution by which a proportionate part is deducted from the profit made, to be divided among either all the workers or those of particular merit. There is no doubt that this can be most useful. Nevertheless, several things prevent you from thinking that a universal remedy is placed in this practice. For profit is not always at hand; the rationale of estimating what falls to the workers is not free from difficulty and suspicion; and today most are not so disposed in mind that they grasp the true rationale of this institution. Moreover, in many arts workers are already accustomed to demand that, as the price of merchandise rises, the wage of each rise, and thus they indirectly acquire for themselves a portion of the profit.

But what must especially be observed by us, who write concerning justice, is that unless managers bind themselves **from justice** to furnish such things—that is, so long as the true species of a reward strictly understood is retained—these must be given **above a just wage** and cannot be considered a supplement to the just sum.

And the rationale is the same for other advantages which, without stipulation, are customarily granted to workers from a certain humanity.

Chapter II: On the Just Wage

St. Thomas, I-II, q. 114, art. 1; Molina, *De iustitia et iure* [*On Justice and Right*], vol. 2, disp. 506; Lessius, chap. 24, dub. 4; C. de Lugo, disp. 16, nos. 79–81; disp. 26, nos. 9, 180; disp. 29, nos. 62, 63; Waffelaert, *Animadversiones quaedam de iusta mercede seu iusto salario opificum* [*Certain Observations on the Just Recompense or Just Wage of Workmen*];¹ Lehmkuhl, *Arbeitsvertrag und Strike* [*The Labor Contract and the Strike*]; Liberatore, *Principii di economia politica* [*Principles of Political Economy*], pt. 2, chap. 5, art. 3; de T'Serclaes, *Léon XIII* [*Leo XIII*], vol. 2, p. 107 ff., and letter to *Bien Public*, 20 January 1895; Cathrein, *Moralphilosophie* [*Moral Philosophy*], pt. 2, sect. 1, bk. 5, art. 3, § 1, p. 365 ff., 3rd ed.; Weiss, *Soziale*

Frage [The Social Question], vol. 2; Biederlack, *Die Sociale Frage* [The Social Question], nos. 95–100, translated into Flemish by A. J. Verhaegen, O. Praem.; Antoine, *Cours d'économie sociale* [Course of Social Economy], chap. 19, 2nd ed.; Brants, *La lutte pour le pain quotidien* [The Struggle for Daily Bread], *Les théories économiques aux XIIIe et XIVe siècles* [Economic Theories in the Thirteenth and Fourteenth Centuries]; A. Verhaegen, *Le Minimum de salaire* [The Minimum Wage] (*Magasin Littéraire*, 1892); Ed. Capelle, *Le Problème actuel* [The Present Problem]; Périn, *Premiers principes d'économie politique* [First Principles of Political Economy], chap. 5, III; Cauwès, *Cours d'économie politique* [Course of Political Economy], vol. 3, pt. 2, bk. 5, sect. 1, chap. 3; E. J. De Gryse, *De Contractu Conductionis* [On the Contract of Hiring]; Van Gestel, *Rechten en plichten van het Kapitaal* [Rights and Duties of Capital]; Bruin, *Rechtvaardigheid en arbeidsloon* [Justice and Wages]; Gayraud, *Questions de jour* [Questions of the Day], V; G. Théry, *Exploiteurs et salariés* [Exploiters and Wage-Earners], chaps. 10–20; Dehon, *Manuel social chrétien* [Christian Social Manual], chap. 1, § 8; D'Hulst, *Conférences de Notre-Dame* [Notre-Dame Conferences], 1896, 6th conference; Castelein, *Institutiones philosophiae moralis et socialis* [Institutes of Moral and Social Philosophy], thesis 22; Pottier, *De iure et iustitia* [On Right and Justice], diss. 3, chap. 3, art. 5; Otto von Zwiedineck-Südenhorst, *Lohnpolitik und Lohntheorie* [Wage Policy and Wage Theory].

¹ We were kindly given the opportunity to read this distinguished study before it appeared in the periodical *Collationes Brugenses*, vol. VI, January 1901. This was the more gratifying and welcome to us insofar as we saw confirmed there what we had discovered and written by our own effort, so that in this dissertation we can now appeal to the safest support: the authority of the Most Illustrious and most learned Bishop.

Article I. On the General Rationale and Obligation of a Just Wage

§ 1. Approach to the Disputation

403. How broadly the present question extends. Most of those who dispute concerning the present argument consider almost nothing but manual industry, as though no agreements of a similar rationale were entered into concerning nobler arts or works. It seemed better to us to embrace that entire class in words. For while we thus confess that not only labor of the body but also labor of the mind is let and hired, and show the cause of price common to both,¹ do we not thereby repel from a worker's wage the odium by which it is held in contempt and is described by not a few as contrary to human dignity? In truth, however, all those who seek sustenance or annual returns for themselves, not from goods already possessed but from their present industry, can be distributed as it were into three classes. Some **sell the fruits of their industry**: thus merchants, businessmen, and many writers. Others **hire another's labor**, as contractors for works, physicians, notaries, and advocates in legal causes. Finally, others **let their own labor**; and these are all those who bind themselves for a definite price to do certain things for another's benefit during some period of time, not rarely under another's guidance or direction: thus workers, servants, and even officials, including those whose office is regarded as honorable, such as teachers of the sciences and even judges themselves.

¹ Cauwès, no. 811, notes something similar concerning the economically required wage which they call *salaire normal* [normal wage].

404. Division of the chapter. This fuller account of the matter does not allow us immediately, as is generally done, to speak of that which is the minimum in a just wage. Besides, the whole controversy

concerning a fitting recompense for labor is not placed in this. And it is of no little help to treat separately the two questions of a just wage and a minimum wage. For:

1. Formally, the rationale of each investigation is different. For: **a)** It is not evident that the consideration of a minimum wage pertains to every kind of labor, while all those who, apart from a partnership, furnish intellectual or bodily industry for a definite wage are manifestly concerned about just recompense. **b)** A just valuation must be made of all things which are exchanged, and, as we shall see, the just determination of a wage is subject to the same rules as other valuations; while, on the contrary, the investigation of a minimum wage is proper to this argument, and it is not so evident whence it is to be derived. **c)** Therefore, no one doubts that there is a just wage, but whether there is a minimum wage is called into controversy. **d)** In the general investigation of a just wage, the special circumstances of the business which the labor serves are disregarded *per se*; that these can be omitted when a minimum recompense is in question is far less evident.

2. Moreover, while many define the minimum recompense by the sustenance either of the worker alone or of his family and seem to pronounce it always just, what else do these writers advocate than a certain iron law of wages?² This invention of the socialist Lassalle is certainly most foreign to their studies and to their disposition favorable to men of slender means. Yet in what manner it can be conceded that the wage which is established as absolutely minimum is generally at the same time just will have to be investigated by us in its proper place; but it was not fitting thus incautiously, from the beginning and as it were *a priori*, to follow in the footsteps of the tenets of the adversaries by which they attack the present order.

² Unless we are mistaken, in the Roman document itself, concerning which below, some things give occasion for an understanding of this kind. For when, in the explanation of the first point, it contends that the criterion by which an equality of thing between the worker's manual labor and the wage to be paid is established "must be sought ... from food and clothing for suitably sustaining life," and it is added below that "while the requirement arising from the rationale of the end—namely suitable food and clothing—remains firm, a modest addition to or diminution of the worker's wage is made, or at least can be made, from common estimation without prejudice to justice," is there not in fact introduced the thought of some law by force of which the wage is constantly bounded by suitable sustenance?

405. On pure profit. In profitable businesses, **profit**, taken broadly, embraces all the fruits gathered (*produit brut* [gross product]); properly, however, it is that which remains after expenses are deducted:

pure profit (*bénéfice net* [net profit]). Moreover, among the expenses are numbered:

α) The annual interest to be paid on borrowed money, and the sum to be reserved each year by which the repayment or renewal of the capital is gradually prepared (*intérêt et amortissement du capital emprunté* [interest and amortization of borrowed capital]);

β) The wages of the workmen;

γ) The price of the material to be transformed (*le prix de la matière première* [the price of the raw material]); and the other expenditures annually necessary for maintaining the building, transporting merchandise, and so forth (*frais généraux* [general expenses]).

Often the remuneration of the money and labor invested or contributed by the person or persons who undertake the business is not computed, and deservedly so, since they assign their money or labor to their own business and no one pays anything to himself.³ We, however, in the present question, number these among the expenses, so that we take pure profit in a very strict sense.⁴

³ Cf. Cauwès, work cited, no. 800; Ott, *Traité d'économie sociale* [*Treatise of Social Economy*], vol. 2, pp. 170–171.

⁴ “That part of net profit which constitutes a free income.” Cauwès, place cited.

Nevertheless, we in no way number among the expenses a sum destined for enlarging the business.

§ 2. Formulation and Arguments of the Conclusion

THESIS XXVIII

A just wage is the true price of labor considered in itself, to be defined from agreement and common estimation.

A wage thus established is neither to be diminished nor increased from justice according to the varying fortune of the business.

Nevertheless, it is licit for the employer to agree with the workers upon a recompense less than the just amount, in order that he may safeguard for himself a moderate fruit of capital and of his own industry, but not in order that he may seek pure profit for himself.

406. I. State of the question. 1. THE INTENTION OF THE THESIS appears to be threefold: what the objective rationale of a just wage and its measure are; with what rigor justice permits adherence to just agreements and the disregard of the various vicissitudes of affairs; for what cause an agreement for a lesser wage can be excused. That is, we shall treat in order of the stipulation of a just wage, of its force, and of the promise of a lesser wage.

2. OPINIONS. Since these three conclusions are readily derived from the theses concerning the just price of things and the form of the stipulation of labor, they ought *per se* to please all those who defend with us the things thus far handed down in this matter. Nevertheless:

a) As to the first part, there are some who, while acknowledging the letting of labor, nevertheless abhor the expression **price of labor**: thus Liberatore, to whom a wage seems to be not a price but a recompense;¹ or they will the worker, although hired, to have a perpetual right to the fruit of his industry, so that the wage must be equated with this fruit, after deducting, however, the price of the twofold insurance (no. 390)² and the just discount (*escompte*) on the anticipated payment.³ It is especially this opinion that we refute at present. It is defended by Rev. Fr. Weiss⁴ and was proposed by Rev. Mr. Keesen at Liège in 1890, in the third Catholic Congress.⁵ Indeed, the distinguished Périn does not seem altogether foreign to it, *Principes d'économie politique* [*Principles of Political Economy*], appendix, p. 404 (2nd ed.). The same author, p. 307, note, denies that the price of labor must be accommodated to its value alone.

¹ “Not a price but a recompense.” Work cited, no. 89.

² There we described this twofold security by which the manufacturer, by paying a definite sum to the workers, frees them from the danger of losing as it were their principal and promises them a smaller but certain profit. The matter then falls back into a certain kind of triple contract (no. 385.2).

³ Rev. Mr. Gayraud acutely states the question in this way in *Science Catholique*, 1894, p. 989, in *Au congrès catholique de Lille en 1893* [*At the Catholic Congress of Lille in 1893*]: “Is the wage the price of the letting of labor, or the price of the worker’s renunciation of the product of labor?” We maintain the former; the adversaries, the latter. Not without reason does Cauwès, no. 803, object to them that their tenet is not dissimilar to a certain dogma of the socialists: “The alleged relationship between the wage and expected profit has an evident affinity with a socialist theory. According to this

theory, the worker has a right to the value of the product. The theory which we criticize likewise gives the worker, not the integral value, but a proportionate share of the value of the product.” Cf. also no. 798, where he well explains the opinion which he rejects with us.

⁴ *Soziale Frage* [The Social Question], vol. 2, pp. 663, 664, 698. Here is his formula: “Its amount—that is, the amount of the fixed wage—must indeed be calculated according to the product or return of the business conducted jointly by capital and labor. Thus from the wage (*Lohn*) there arose the remuneration (*Löhnung*).”

⁵ First section, *Terminologie sociale* [Social Terminology], pp. 93, 95.

Finally, several economists say ambiguously that they estimate the wage from the productivity (*productivité*) of labor. For what productivity, I ask, do they understand? That which the labor possessed in the particular business for which it was hired? Then they are deceived by an error and by a confusion of contracts. Or that which commonly inheres in some kind of labor? We do not indeed object insofar as the common estimation of labor of this kind is sought from it. But how will you transfer this rule to the labor of servants strictly so called and of all those whose use is not profitable?

Even Rev. Fr. Castelein by no means escapes either reproach—of ambiguity and of excessively narrow utility—in this formula of his, which, besides, regards the sum of wages rather than individual wages: “A twofold norm of a just wage must be acknowledged: namely, a proximate, strict, and absolute norm, which is to be defined as the value of labor according to the equitable price of the thing produced, after the share of capital and management has been deducted in proportion to its merit; and a supreme, general, and conditional norm, which can be called the collective family wage.” *Institutiones philosophiae moralis et socialis* [Institutes of Moral and Social Philosophy], p. 376. Moreover, since management is a certain kind of labor, in what manner, so long as you are ignorant of the value of labor, can you investigate it by considering what share falls to management? Nor is it any less obscure to us how the norm which is called conditional can be compared as superior with an inferior norm which is declared absolute. What is more, while the proximate norm directs commutative justice, this justice, on p. 383, is denied to be affected by the supreme norm, so that the words **just wage** are placed ambiguously in the formula cited. Finally, by this manner of speaking, in which that which remains after the share of capital and management has been deducted is ascribed to labor, he seems to concede to these two some priority of right over labor. This is certainly foreign to the mind of the most distinguished writer. Nevertheless, the **price of labor** cuts off every occasion of odium. And thus, from zeal for the truth, we have candidly disclosed our mind, with every esteem for the man and friend preserved and without detracting anything from the many praises which he has justly and deservedly obtained through the distinguished fruits of his ready talent.

b) As to the second part, all who interpret the stipulation of labor after the manner of the triple contract must, if they think consistently, regard an extraordinary profit or a loss which could have been foreseen as a necessary cause for increasing or diminishing the customary sum of the wage. Otherwise, the risk which the master of the partnership assumes is inequitably estimated.

Those, however, formally oppose us who, with the socialists, claim for the worker a certain necessary right to a proportionate part of the fruits.

But although there are many who profess the worker’s right to participate in the fruits, there do not seem to be any who, at least in express words, acknowledge the correlative obligation to sustain a part of the losses. This already makes indirectly for our thesis.

c) **As to the third part**, there are some among Catholics who excuse the payment of a wage less than that which is just *per se* only when the businesses of some region are commonly in straits. But they think that one who has undertaken a business whose successful outcome is not foreseen unless wages are depressed below the customary price of the region acts unjustly *per se*. Thus Génicot, *Theologiae moralis institutiones* [*Institutes of Moral Theology*], vol. 1, no. 648.

The distinguished Périn, although on p. 298 he regards only general circumstances which generally prevent a wage just *per se* from being paid, nevertheless seems to speak with us on p. 311 (*Premiers principes* [*First Principles*], 1st ed.; p. 323, 2nd ed.). And, unless something deceives us, Mr. A. Verhaegen maintains the same, work cited, no. III.

3. THE TERMS ARE EXPLAINED.

Just, or that which is due *per se* from commutative justice.

Wage, or the recompense of any labor hired, even labor of the noblest kind.

Is the true price of labor, that is, the commutative value of labor estimated in money. We say **labor** and not **work**, lest we confuse this hiring of labor with the letting of a work. No. 391.

Labor considered in itself, that is, not terminatively or in its fruit, but insofar as it signifies the use of a man's powers promised to another—the prestation of a human act—almost as the annual rent of a hired house is the price of the use of a certain house.

From agreement and common estimation. Although we posit these two things, we merely transfer here the general conclusion of Thesis XXV concerning the just price of things. For within the limits of this price established by common estimation, the consent of the parties itself is accustomed to designate the price more precisely.

But beware lest you immediately think that the price customary in a definite place (*prix courant* [current price]) is defined by common estimation. For this signifies the common judgment both of the people and of employers concerning the justice of a certain valuation. It happens, however, that what is paid somewhere by a very powerful master of a business is commonly judged to be too little. Cf. Gayraud, *Questions du jour* [*Questions of the Day*], V, p. 166.

A wage thus established. Thus, that is, according to these rules.

Is not from justice. The rationale of equity will often be different.

Neither to be diminished nor increased according to the varying fortune of the business. Whether the profit has increased immensely or an enormous loss has been suffered, the debt is not affected by these vicissitudes. Here, therefore, the discussion is necessarily restricted to profitable industry alone.

Nevertheless, for the employer, or, universally, for him who hires workers.

It is licit to agree with the workers. Their consent is therefore required, and indeed consent which is vitiated by no fraud or force. Nevertheless, the fact that they assent somewhat reluctantly and under the compulsion of necessity does not prevent it.

Upon a recompense less than the just amount. For although guilt of injustice is then absent, the recompense must be called less than the just amount insofar as it remains below the merit or value of

the labor. Cf. what we said, as if from the opposite side, concerning a higher price in no. 349.

In order that he may safeguard for himself. We require a serious end, so that, another path being morally closed, he is himself driven to enter upon this one.

A moderate fruit of capital and of his own industry. If, therefore, some business has turned out adversely, or if through excessive competition among rivals (*concurrence* [competition]) the price of merchandise has become low, and it is shown for either reason that the owner cannot hope to acquire from the sum of the return a fitting recompense both for himself and for others, we concede that he is not bound from justice to persevere in what he has begun. But if he wishes to proceed further, the same justice does not prohibit him from offering, without force or fraud, a wage which in other circumstances would be less than the just amount to workers who, taking counsel for themselves, will accept or reject the proposed conditions. Cf. A. Verhaegen, *Le minimum de salaire* [*The Minimum Wage*], pp. 24–25.

But not in order that he may seek pure profit for himself, strictly understood (no. 405), or that greater but uncertain advantage by the hope of which those who undertake a business or who adhere to them as partners are moved. Therefore, we permit them, in making the agreement, to strive to have first place so long as there is question of the customary fruit either of money which has been lent at interest or of labor let in another's affair; but we command them to pay a just wage before they think of gathering the fruit which is proper to partners or employers.

II. Proof.

407. A. OF THE FIRST PART. I. A just wage is the true price of labor considered in itself.

Argument 1, direct. In order that a just wage be regarded as the true price of labor considered in itself, it is necessary, but at the same time sufficient, that the temporary cession of the use of one's powers be compensated by the wage.

But. A cession of this kind is compensated by the wage. **Therefore.**

To the major. For the pecuniary compensation of an exchanged thing is its very price, which is called just if the true price is given.

Proof of the minor. The cession of use is compensated by the wage, for labor is truly hired for a wage. Cf. above, no. 395.2. The use of human powers is compensated, for the labor which is hired is some use of these powers.

And in truth, one who lets his labor deprives himself of the faculty of employing his powers for his own advantage. He is deprived of this use; therefore, this use must be compensated. "That which is let," says Rev. Mr. De Gryse, work cited, p. 30, "is the use of the human operative power, nothing besides; the wage is then established."

Argument 2, indirect. The other opinions, if the statement of Liberatore is excepted, **a)** neither preserve the generic rationale of the contract of letting and hiring; **b)** nor distinguish either between partnership and letting, or between the letting of a work and the letting of labor; **c)** nor can they befit every species of wage. Liberatore himself, however, seems to dissent from us less in reality than in words and, struck by a vain fear, to have chosen an ambiguous word.

Therefore. They are to be rejected, and Liberatore's manner of speaking is not to be approved.

To the antecedent. For they come back to this: that they will the fruits of the worker's own labor to be attributed to him and the wage to be estimated from the presumed (*estimé à forfait* [estimated at a lump sum]) merit of the labor in the definite business for which it was hired. But in this manner: **a)** letting and hiring perishes; for he who lets a thing alienates the use of the thing for a time and therefore can no longer make its fruits his own. Moreover, **b)** this manner of speaking which we oppose corresponds perfectly to the triple contract, which is a species of true partnership. Moreover, insofar as its defenders wish to estimate the wage from the merit of labor in a definite business, they in reality measure this by the work accomplished. For the merit of labor is regarded by them terminatively; it is estimated in its efficiency, that is, from the work insofar as this is to be ascribed to the labor. But determination from the work pertains to the letting of a work. **c)** What if labors in no way fruitful are exacted, or if the owner commands the worker to remain idle? What place is there then for the rationale opposed by us?

As to Liberatore's statement, **recompense** is an uncertain word which can in reality sound the same as price. In the present matter, however, it cannot be the recompense of labor insofar as **labor** signifies some service and willingness on the worker's part; for thus, unless you fall into the error of Bastiat, it is a matter of grace, not justice. It remains, therefore, that labor be understood without any consideration of a beneficent intention. But understood in this manner, what remains in it to be compensated besides its economic function or value, whose pecuniary recompense is most formally a price?

Moreover, let this **confirmation** from St. Thomas be heard, *Summa Theologiae*, I-II, q. 114, art. 1: "For that is called a wage which is recompensed to someone in return for a work, as a certain price of it."

Nor on this account, as Liberatore fears, is anything detracted from the innate nobility of human industry, since we by no means deny that it has other aspects and contend this one thing alone: that this labor, as formally hired, is compensated by a price strictly so called. "Although the work of the worker," the author of the Roman document elegantly observes, "is something nobler than merchandise, it nevertheless retains the whole rationale of merchandise from that part by which it signifies an order to price." Cf., besides, the difficulties and scholia.

2. To be defined from agreement and common estimation.

This assertion follows immediately upon the rationale of price which has been proved. For the thesis concerning a just price has universal force. Therefore, until they have clearly established that something else must be maintained here, it is licit for us to pass over many things. Besides, this formal rationale for defining a just wage is already proposed by St. Antoninus, *Summa theologica*, pt. 2, tit. 1, chap. 17, § 8, and is expressed in explicit words by Molina, disp. 506, no. 4; Lessius, chap. 24, no. 23; and C. de Lugo, disp. 29, no. 62.

408. B. OF THE SECOND PART. A wage thus established is neither to be diminished nor increased from justice according to the varying fortune of the business.

The vicissitudes of another's business profit or harm no one from commutative justice.

But. From the things demonstrated above, the business for which a worker is hired for a wage strictly understood is formally alien to him.

Therefore. The vicissitudes of the business neither profit nor harm him from commutative justice, and consequently leave the amount of the wage owed intact.

This is confirmed by the fact that the various vicissitudes of a definite business do not affect the interest to be paid on borrowed money. But the formal relation to the business of money and labor which have been let is equal.

N.B. Observe that one must not, as some patrons of our opinion do, have recourse to the efficient causality of unexpected profit. That argument, sought outside the nature of the contract, furnishes an occasion for controversies and doubts. Cf. above, no. 401.

409. C. OF THE THIRD PART. Nevertheless, it is licit for the employer to agree with the workers upon a recompense less than the just amount, in order that he may safeguard for himself a moderate fruit of capital and of his own industry, but not in order that he may seek pure profit for himself.

In order that the force of the argument may be perceived better, observe that in this part we are not treating of the uncertain fortune of a business already undertaken, whose risk is compensated by the hope of profit and pertains entirely to him to whom the pure profit itself will fall. Rather, we are treating of a business which, in the circumstances in which it is to be undertaken, does not promise so great an abundance of returns as would be necessary so that, when that wage for labor which is defined as just by common estimation has been established, a fitting fruit of one's own labor and capital, or even some pure profit, may nevertheless be gathered. Now, if you wish to hire workers for this business, will it be licit for you to stipulate a lower wage? The workers certainly remain free to reject such a condition. But can you, in these circumstances, impose it upon them, insofar as you deny that you will hire their labor on another condition?

Now, we establish as follows that this is honestly done by you in the former hypothesis, but not in the latter:

Argument. a) Standing within strict justice and the limits of the equality to be preserved, each person can justly provide for himself in making an agreement and procure the best conditions. He can therefore, by honorable means—that is, without force or fraud—use his prevailing condition to bring it about that that which is just *per se* is repaid to himself before another, although the latter is perhaps more needy.

b) Commutative justice, however, forbids you to become rich from what belongs to another in such a manner that, formally or virtually, you gather as fruit for yourself that which is another's good.

But. He who, in stipulating a contract, agrees upon a lower wage in order that he may gather a fitting fruit of his own labor and capital merely provides for himself in the former manner. But one who attempts to rely upon another excuse becomes rich from what belongs to another. **Therefore.**

For the evidence of this matter, a) observe that the **fitting fruit** of labor or money is, from the very notion, its equivalent compensation, or, if you prefer, its restitution under another form. But it is immediately evident that all who freely contribute something of their own for procuring some end, or place some good of their own in some business, have the right to recover what is their own, that is, to receive a fitting recompense for their money or labor. Nevertheless, they can depart from this right, either by a voluntary abdication from a liberal spirit or by force of necessity, even somewhat

unwillingly, when, without anyone's fault or promise to compensate the damage, the thing has perished wholly or in part—that is, when the sum of the returns is unequal to paying each person what is his own. It is then licit for each person, in a similar cause, to prefer himself to another, that is, to provide first for himself. Therefore, if it happens that some debtor is insolvent, it is licit for each of the creditors, with consideration of the others omitted, to contend with the others in diligence and, by honest arts, bring it about that satisfaction is made to himself, even in full. In like manner, in the present class of case, where a smaller future sum to be gathered is foreseen, it will be licit for individuals, through the very conditions of the agreement, to attempt to preserve themselves unharmed. It will happen *per accidens*, and must be attributed to unconquerable necessity, that this is attempted in vain by many and falls only to the stronger. Nevertheless, this victory of the stronger will not be repugnant to justice, since no one, by this title, is bound to remit anything of his own right.⁶

⁶ “He [the employer],” the distinguished Périn says very well, “owes the just wage ... only when he finds in the result of his operation the means of ... paying it, at the same time as he finds there the means of paying himself, in the measure which the situation permits, the recompense of his work of conception and direction....” *Note sur le juste salaire* [Note on the Just Wage], p. 6.

b) But a far different judgment must be made concerning **pure profit**. This is not mere compensation or restitution, but an increase which it is licit for the owner of a business to seek from his own thing if it truly yields that increase. But it yields none so long as the returns merely equal a fitting recompense for all. Therefore, one who then wished to make a profit would make gain not from his own thing, but by taking away from another's thing or by converting another's loss into his own profit. Nor could their consent, which they would give unwillingly in a certain respect, remove the character of injury. Cf. nos. 146, 344.

This is confirmed from the received maxims that fruit is not understood except after expenses have been deducted, nor profit except after debt has been deducted. Cf. law 30, Digest, *Pro socio* [On Partnership] (XVII, 2).

It is confirmed again by the fact that no one, on account of a cause of this kind, thinks of paying creditors interest on money which is less than the just amount. Hence a different manner of acting in the case of workers truly savors of a certain oppression of the poor.

410. III. Difficulties.

1. FROM THE DIGNITY OF THE HUMAN PERSON. Human labor is not to be placed among commodities. Cf. Liberatore, no. 89. Therefore, the rules by which the price of these is defined cannot be transferred here.

Reply. I distinguish the antecedent. It is not to be placed among commodities under every respect, C.; under the respect under which it is exchanged in letting, N.

For insofar as it is a human action, it certainly exceeds the entire economic order; but insofar as the causality of economic utility is present in that action, it acquires economic value. Whatever possesses economic value is, as such, placed among commodities. But it is exchanged in letting under this respect. Besides, the reason objected would bring this excessive consequence: that labor cannot properly be let. For commodities are properly exchanged. But as soon as you concede a true letting, you must concede the true price of the thing let, if you wish to adhere to general principles.

Instance. A worker cannot be regarded as a machine. But by placing his labor among commodities, you regard the worker after the manner of a machine. Therefore.

Reply. I concede the major; I distinguish the minor. If you equate his labor with a commodity simply, the worker is regarded as a machine, C.; if under a definite respect, N.

For by saying that the price of labor let must be estimated from the value of its use, we do not deny that there are other duties, even of justice, to be observed toward the person of the worker, insofar as the labor cannot be separated from that person as furnishing the labor. But just as the person is present concomitantly, so these duties will be present concomitantly or mediately, and not immediately by force of the contract of letting labor. Both are often outside and above this contract.

The various rationales by which workers are assimilated to machines will be handed down in the scholium.

2. THE WHOLE RATIONALE OF A JUST WAGE MUST BE SOUGHT FROM AN AGREEMENT FREELY ENTERED INTO.

Reply. I distinguish the assertion. From an agreement freely entered into, with the rules of a just price observed, C.; otherwise, N.

Thus returns the error of the liberals who deny the objective rationale of price or consider nothing except the customary price such as the law of supply and demand has made it. Nevertheless, it is astonishing with what force this error held many minds, even those of the best men. Cf., for example, the things disputed at Liège in the third Catholic Congress by Mr. Théry, so that he contended that the customary wage of the place is always just.⁷

⁷ Second section, *Durée légale de la journée du travail* [Legal Duration of the Working Day], p. 107 ff. It is useful to transcribe some things from his words: “The employer is no freer than the worker, or rather both are sufficiently free to contract validly.... The just wage is the wage which conforms to the custom of the place; and when you, the employer, have paid the wage which conforms to the custom of the place, in justice you are quit. From the standpoint of justice, you have done what you had to do. Nothing more can be demanded of you. This, then, is what the just wage is. It is nothing else.

Now, however, not a few have begun to confess that they had been deceived by a false appearance and that the free option which would exclude every injustice had often existed in name only.⁸

⁸ Thus, for example, C. Goblet d’Alviella, in a speech delivered in 1897 to the students of the (liberal) University of Brussels: “One only compromises the cause of liberty when one invokes it in the conclusion of the contract between the employer, who can wait with the sole reservation of restricting his profits, and the worker, who is incapable of doing so, pressed as he is by his poverty and that of his family.” See *Revue de l’Université de Bruxelles*, vol. 3, pp. 91–92.

St. John Chrysostom already derided that fictitious kind of liberty in the question of usuries: “Do not tell me that he willingly accepts such a thing and gives thanks for the interest. For this happens through your inhumanity. For even Abraham, when he handed his wife over to the barbarians, readily made their evil counsel acceptable to himself—not willingly, but from fear of Pharaoh. Thus also the poor man ... is compelled to give thanks for cruelty.” *On Matthew*, homily 56 (otherwise 57), no. 6; Migne, P.G., vol. 57, col. 557.

§ 3. Supplements to the Doctrine

I. COROLLARIES

411. There is no privilege either of capital or of labor by which justice commands that first place be accorded to either in making an agreement or in the effect of an agreement made. With equal right, if a partnership is entered into, each class of contracting parties demands that the profit be divided according to merit; with equal right also,

“But, you will tell me, with the just wage one dies of hunger; that is possible.” if the ownership of the business belongs wholly to either party, or if there is question of a nonprofitable use, the other will demand a just compensation according to value for the labor or money hired. Nor do we approve the opinion of some who, from a certain right not indeed of necessity but of decent sustenance and culture, adjudge to a poor workman a privilege by which, even contrary to the terms agreed upon, it is licit for him to demand that satisfaction be made to him before others, or even that he himself may retain by occult compensation that which seems an equitable price for the labor.

412. Just causes for increasing or diminishing a wage defined by the common estimation of labor of that kind—causes which we deny to be *per se* inherent in the fortune of the business itself—will certainly be those which can be derived from the preceding thesis. For the doctrine of extrinsic titles will obtain here. Therefore, the hired worker will also be able to seek the price of the special profit of which he suffers loss, or of the special damage which he sustains in order to let his labor for such a use. The hirer of the labor, however, can value less highly labor which is less useful to him and to which, from a certain humanity, he obliges wage-earners lest they grow dull in sorrowful idleness.

413. On contracting for a work at a lower price. If we excuse the agreement for a lower wage from the necessity to which the employer himself is compelled to yield, this rationale shows that one must judge otherwise when he himself is the voluntary author of a necessity of this kind. For it has happened not so rarely that those who are accustomed to contract for works, in order that these works may more certainly be awarded to them, voluntarily promise inequitable conditions which would be harmful to themselves unless they should profit from the workers’ wages.

These arts must be convicted of injustice unless it is evident that, on account of established practices, no probable hope is available of hiring labor more equitably.

For those who publicly let works can honestly intend this one thing, and must be judged to have intended it: that they obtain favorable conditions **within the limits of a just price**. Therefore, they tacitly ask the contractors for the works, as it were, at what lowest price they can **honestly** execute the work. Honestly, I say, and consequently while paying the workers a just wage. But contractors who, while promising the conditions, think of deducting something from this wage dispose of a thing which is not their own and prepare to gratify the employers at another’s expense. Therefore, if promises of this kind are brought into effect, they will convict the contractors themselves of formal injury; but the employers who profited from them will retain another’s thing—I mean the part of the wage which was to be supplied. Although the latter will generally be excused by good faith and ignorance.

It was indeed to be desired *per se* that customs of their own accord be composed according to the rules of right and equity, especially since a just exception can be taken into account where things are

done well voluntarily. For the very weakness and lack of skill of the worker are most equitable causes for paying a lower wage; and it is expedient that even the less capable be able to be hired so that they may acquire some gain for themselves. Therefore, it does not seem strange to us that there were some who objected at first lest provision be made for a definite wage for workers in public lettings of works.¹ But in this heat of competitions, we judge it to have been better that provision be made for the more general good of the workers who possess strength than for the special utility of some. Therefore, we add our vote to the practice which became common in Belgium some years ago of requiring contractors for municipal works to indicate the minimum wage at which they themselves would hire workers.

¹ Concerning this matter, which is called in French *inscription d'un minimum de salaire dans les cahiers des charges* [insertion of a minimum wage in specifications], cf. the discussions in the Belgian body called the *Conseil supérieur du travail* [Superior Council of Labor], 2nd session, pt. 1.

II. SCHOLIA

414. The rationales by which the innate dignity of human labor is depressed are approximately these:

1. If, as Varro, *De re rustica* [*On Agriculture*], bk. 1, chap. 17, relates was customary among many in his age, you distinguish among the things by which fields are cultivated “three parts: the vocal, semivocal, and mute kind of instrument—slaves, oxen, carts”;

2. If you deny that masters or employers must devote care to the health and morals of workers or servants, as though even positive harm to body or soul, received through the fault of the employers, were not opposed to commutative justice itself;²

² Cf. Gayraud, *Science Catholique*, 1894, pp. 992–993.

3. If you regard the worker’s food as an expense by which labor is obtained (*coût de production du travail* [cost of production of labor]), almost as a definite power of steam is obtained by a definite quantity of coal,³ whereas food is referred to the nobler end of preserving the human person with all his faculties. Cauwès, no. 801, and Pesch, place cited, p. 393, wrote elegantly concerning this matter.

³ “From the economic point of view, workers must be considered as true machines. They are machines which furnish a certain quantity of productive powers and which require in return certain costs of maintenance and renewal in order to be able to function in a regular and continuous manner. These costs of maintenance and renewal which the worker requires constitute the costs of production of labor....” De Molinari, *Cours d’économie politique* [*Course of Political Economy*], vol. 1, p. 203.

4. If, as though workers were to be compared with beasts of burden which do not know how to make advances toward greater culture, you seem to separate their class from the rest of the human race and imagine it to be consigned to mechanical services as to perpetual servitude, so that you call natural that wage by which they are able strictly to be nourished and to beget offspring.⁴

⁴ “The natural price of labour is that price which is necessary to enable the labourers, one with another, to subsist and to perpetuate their race, without either increase or diminution.” Ricardo, *Principles of Political Economy and Taxation*, chap. V, “On Wages.”

It is scarcely necessary to say how foreign we are to tenets and manners of speaking of this kind among many economists, and it will appear more fully hereafter.

415. Concerning the foundation of the common estimation by which a just wage becomes known, this further doubt can arise. For we have seen that just interest “in the abstract” corresponds approximately to the mean measure of the common hope of profit which the citizens of a definite region can receive at a definite time by themselves using their own money. Cf. no. 380. Therefore, it can be asked whether a just wage “in the abstract” also corresponds to the common hope of profit which, in such a place and time, a certain skill and faculty of laboring furnishes to a worker who employs it for himself or as a partner in businesses.

That consideration would be imperfect. For the difference between money and the labor or service of men is that money generally has no fruitful use unless it is converted into things economically profitable, while, on the contrary, the service of men has in itself a weight worthy of a price even when profit strictly so called is set aside. It is a mark of honor, for example, as it were to have command over several servants; it is advantageous to have several at hand who serve the body or the soul.

Therefore, these and not a few other things are elements of common estimation. Indeed, according as the human person is valued more or less highly, and workmen are led into that greater confidence in themselves which Leo XIII recalls at the beginning of the encyclical *Rerum novarum*, the economic value of labor to be hired will vary.

416. The scholastic doctors did not fail to recognize that there are other rationales of injustice besides the agreement for an inequitable wage. Therefore, they mention excessive delay in payment, which even today can be objected against many rich men; and, what could perhaps seem more astonishing, they condemn in forceful words those arts of giving merchandise in place of money, against which, designated in modern speech by the name **truck system**, modern laws had to take action. Concerning these things, so that the debt of justice may be discharged, these two points must be maintained:

a) Things or merchandise delivered in place of money cannot be valued except at the price which they possess in themselves and in comparison with the workers. Therefore, if, as used to happen, the workers must sell those things in order to acquire money for themselves, account must be taken of the price at which the workers themselves can easily exchange them;

b) The time to be expended in selling and any attached burden must be compensated by a greater wage. For as soon as a burden is imposed, the equality of justice forbids that it be exacted gratuitously.

Cf. St. Antoninus, *Summa*, pt. 2, tit. 1, chap. 17, §§ 7–8; Lessius, chap. 20, dub. 8; C. de Lugo, vol. 2, disp. 26, no. 180.

Article II. On the Lower Limit of a Just Wage

417. With what intention and with what hope of fruit we write concerning these matters. 1. First of all, it is useful to bring forward here the golden counsels which Leo XIII sent to the Bishops of Belgium in the letter of 3 August 1881: “This, moreover, must be guarded against in conducting controversies: that the measure which the laws of equity and charity prescribe not be transgressed”; and afterward: “But in those things which are freely permitted to the disputations of wise men, let

minds be exercised, with you persuading and admonishing them, in such a manner that diversity of opinions does not rupture unity of minds and concord of wills.” Cf. D’Hulst, 6th conference at Notre-Dame de Paris, 1896, I.

2. Therefore, with a mind in no way agitated and with zeal for proposing the truth, we shall disclose what we judge to be preferred in this matter. And if one cannot dispute without censure of diverse opinions, we shall nevertheless endeavor to explain and judge these opinions with an equitable mind, so that every excessive contention and every contempt may be absent from our argument.

Indeed, even that very censure of another opinion will not always be able to advance so far that we deny a legitimate use of tenets which we disapprove, until the truth has been made more manifest.

Nor, while we define what justice demands concerning the lowest recompense of labor, do we intend to inquire whether and how great a sin there is in this matter. We do not deny that this matter will be arduous if it is necessary to come to particular conclusions.

3. But if the matter stands thus, someone could ask: to what purpose is this doctrine which does not produce definite obligations? To what purpose are the pontifical documents themselves, which have not removed the doubts?

But in truth, the matters concerning which, after these letters, a consensus of good men is now had are neither few nor slight. Moreover, even if these are set aside, we judge that the fruit of the letters of the Supreme Pontiff was and is great, and we do not regard the disputation itself as fruitless. For, to pass over both the tenets of liberal economic doctrine which were overthrown and the minds of all which were aroused and induced to understand both present questions and to discover arts for consulting at once the good of the proletarians and the welfare of the state—from which zeal and care how many excellent institutions and most useful laws have arisen—to pass over all these things, the very suspicion of an office or debt is accustomed to make pious or honorable men attentive lest they incur reproaches of conscience in any respect. Therefore, with consideration of the past perhaps left aside as uncertain, they will then apply themselves to arranging the present and future in the best manner they can.¹ Then the disputation itself, if it is conducted without obstinacy, will without great difficulty make those things which are true in this matter manifest to many. And this persuasion of many will not only be the cause why a few private men now act rightly, but will prepare a better and happier condition of the state itself.

¹ The distinguished Périn seems to have perceived these things excellently when, work cited (2nd ed.), p. 387, he wrote: “For me, the true import of the decisions of the encyclical concerning the wage is first of all to proscribe every speculation upon the worker’s necessities. It is next to determine the employer, through fear of commutative justice, to do everything which the state of his industry permits in order to assure the worker a sufficient wage; to take every measure which can directly or indirectly improve his condition and assure him the necessities.” Cf. also pp. 403–407, 414, 417.

418. Order of discussion. In order that the discourse may proceed according to reason and method, in the first part we shall view the present cause as if from without, so that, with the mind not yet preoccupied by opinions, we may attain the force and intention both of the encyclical *Rerum novarum* of 16 May 1891 and of a certain Roman response whose celebrity is unknown to no one. Then will follow the three parts by which we are accustomed to treat arguments.

§ 1. On the Acts of the Holy See

419. Interpretation of the encyclical *Rerum novarum*.

I. The principal passage of the encyclical which pertains to our matter seems first to be proposed.

“We touch here upon a matter of sufficiently great importance, which must be rightly understood lest there be error on either side. Namely, the measure of the wage is defined by free consent; and therefore, once the employer has paid the wage agreed upon, he would seem to have discharged his pledge and to owe nothing further. It would then be done unjustly only if either the employer refused to pay the full price or the workman refused to render all the labor to which he was bound. In these cases it would be right for the political authority to intervene so that the right of each may remain intact, but in no others. An equitable judge of affairs will not readily or wholly assent to this argument, because it is not complete in every part: a certain rational consideration of the greatest weight is absent. For to labor is to exercise oneself for the sake of acquiring things which are for the various uses of life and especially necessary for one’s preservation. ‘In the sweat of your face you shall eat bread.’ Therefore, labor has as it were two notes implanted in man by nature: namely, that it is **personal**, because the active power adheres to the person and is altogether proper to him by whom it is exercised and for whose utility it is naturally ordered; and then that it is **necessary**, for this reason, that the fruit of labor is needed by man for preserving life, while nature itself, which is especially to be obeyed, commands that life be preserved. Now, if labor is regarded only from that part by which it is personal, there is no doubt that the workman remains free to set a narrower measure to the agreed wage; for just as he gives his labor voluntarily, so he can voluntarily be content with a wage for his labor which is either small or altogether nothing.

“But one must judge far otherwise if the rationale of necessity is joined to the rationale of personality, since it is separable from it in thought, indeed, but not in reality. In fact, to remain alive is the common duty of each person, which it is a crime to fail. Hence the right of finding the things by which life is sustained necessarily arises, and the wage acquired by labor supplies to every person of the lowest condition the means of these things. Granted, therefore, that the workman and the employer freely consent to the same agreement, and particularly to the measure of the wage, there is nevertheless always something underlying from natural justice, and this is greater and more ancient than the free will of the contracting parties: namely, the wage must not be inadequate for supporting a worker who is indeed frugal and well behaved. But if the worker, compelled by necessity or moved by fear of a worse evil, accepts a harsher condition which, even though he is unwilling, must be accepted because it is imposed by the employer or contractor, this indeed is to undergo force, against which justice protests.”

II. To illustrate this passage, it is necessary to distinguish the things which are certain from those which can come into controversy.

1. The Supreme Pontiff clearly teaches: a) That there is some wage which is the lowest among just wages, and b) that this is rightly gathered from the very duty of preserving life. Therefore, one who wishes to respond with the Supreme Pontiff cannot entirely neglect this kind of argument. Moreover, c) no one doubts that the worker’s sustenance which is said to be procured by the wage must be understood not only as those things by which death is scarcely warded off, but as things which are

fitting, so that they provide decent sustenance and culture according to one's condition. **d)** Nor can we remain long in doubt concerning the justice which the Supreme Pontiff calls natural. For the justice which governs agreements is **commutative** justice, which is here called **natural** because it is prior to the agreement. It is therefore opposed to **contractual** justice.

But two things are less certain: one, by what force the worker himself is bound by an obligation to demand this wage; the other, whether or not the words **for supporting the worker** tacitly signify the necessary sustenance of his family. A few things concerning each.

2. On the binding force of the minimum wage. For there are some who, from the doctrine of the encyclical, deny to the worker himself the faculty of consenting to a wage lower than that lowest rationale of a just wage. Thus Rev. Fr. Cathrein, place cited; the distinguished Périn, *Premiers principes* [*First Principles*], p. 296, 1st ed.; Rev. Fr. Antoine, work cited, p. 559, or p. 595, 2nd ed. And they seem able to rely upon the Supreme Pontiff's own argument, which is drawn not from some right but from a duty. For he says thus: "The fruit of labor is needed by man for preserving life; but nature itself, which is especially to be obeyed, commands that life be preserved." What is more, does not the immediately following sentence—where it is conceded that the workman would remain free "to set a narrower measure to the agreed wage" if regard were to be had to the one note by which labor is something personal—as if of its own accord invoke the other note, by which, when it is posited, this option is denied, since account must also be taken of necessity? Indeed, is not this price called "greater and more ancient than the free will of the contracting parties"?

Nevertheless, we approve the explanation of others who see this alone confirmed in this passage: that there inheres in human labor, before every agreement, a certain minimum value, or a minimum price to be paid from justice in exchange,¹ by which a right of the worker, but not a duty *per se*, is defined. Thus Rev. Mr. Esbach in the cited article; Verhaegen, p. 57; Rev. Mr. Gayraud, work cited, p. 172.

¹ But if perchance less has been promised, the contract cannot therefore be called null. Rather, before execution it will be rescindable. But if the labor has been furnished, the just price must be supplied. Rev. Mr. De Gryse, work cited, p. 40, too absolutely judges null "on account of a vitiated substance" a contract by which the wage is established as inadequate for supporting the worker.

We think this can be established briefly as follows: **a)** The intention of the speaker is generally most apparent in the conclusion. But in this conclusion justice is introduced as protesting only "if the worker, compelled by necessity or moved by fear of a worse evil, accepts a harsher condition." **b)** As is evident from the first words, the Supreme Pontiff refutes those who will every rationale of what is owed to be estimated from the agreed wage. To this end it is sufficient to vindicate a superior rule. **c)** Since sustenance is understood as those things which correspond to decent maintenance, it becomes manifest *per se* that the worker remains free to cede a great part of these things. And why would it not be licit to labor gratuitously and live upon alms obtained by begging?

Therefore, this is gathered strictly from the duty of preserving life: that there is a lowest rationale of a just price which the worker has the right to seek, indeed to demand, and of which, although perhaps he can divest himself, he must not be judged to have divested himself by consent which he gave unwillingly. And nothing other than the objective value of human labor is declared more ancient than the will of the contracting parties; nevertheless, we are not compelled *per se* to insist upon it in an agreement. That is, it is licit voluntarily to offer one's labor for a lower wage to someone who then, without injury to you, will not pay you more. It remains, nevertheless, that the greater sum is just

and that you were content with less than the just amount. Therefore, the Supreme Pontiff confirms our conclusions concerning a just price (Thesis XXV) and adds a criterion by which it can be discerned below what sum a just wage cannot remain.

3. The question concerns whether or not the words “for supporting the worker” in some manner contain the sustenance necessary for his family.

Many affirm this, such as the distinguished Périn, work cited, 2nd ed., p. 299 ff.; Verhaegen, *Le minimum de salaire* [*The Minimum Wage*], III; and they appeal to the words by which the Supreme Pontiff seems a little below to disclose his mind, when he writes: “If the worker receives a wage sufficiently ample that by it he can suitably maintain himself, his wife, and his children, he will readily devote himself to thrift, and so forth.”

Although these words, and others which can be drawn from other encyclicals,² suggest that regard for the family was not passed over by the Supreme Pontiff, nevertheless, we assent rather to those who, such as Rev. Fr. Antoine, work cited (2nd ed.), p. 607; Rev. Mr. De Gryse, *De contractu conductionis* [*On the Contract of Hiring*], p. 45; and many others, judge that it is **formally** passed over. For the words **for supporting the worker** of themselves admit either meaning; nor does one who says **the worker** exclude the family. But the Roman Pontiffs are accustomed in their encyclicals to establish correct principles, but to abstain from defining the more difficult questions which are disputed among Catholics themselves.

² Cf. von Zwiedineck, *Lohnpolitik*, and so forth, p. 127.

But if you ask this further question—whether the rationale offered in the encyclical is perhaps of such force that it logically leads us to the opinion of a wage in some manner familial—we by no means deny it; indeed, we shall voluntarily defend it in our conclusion.

420. On the Roman response. 1. Historical vicissitudes.³ Shortly before Catholics from various regions assembled at Mechelen in 1891, His Eminence Cardinal Goossens, Archbishop of Mechelen, in order that he might more easily remove excessive strife in disputing, asked the Holy See three questions concerning the matter of wages. The Holy See, however, as generally happens when it does not wish to interpose its own authority and nevertheless to satisfy the petitioner in some manner, sought the opinion of a certain consultor.

³ We shall relate them substantially from the work of Rev. Mr. de T’Serclaes, *Léon XIII* [*Leo XIII*], vol. 2, p. 107, which, because it was specially approved by the Supreme Pontiff, has the greatest weight in this matter.

He, as afterward became known, was Cardinal Zigliara, whom report holds not to have been without a part in drafting the encyclical *Rerum novarum*. Moreover, the opinion of the Most Eminent man was communicated through His Eminence Cardinal Rampolla, Secretary of State, to His Eminence the Archbishop of Mechelen, so that he might make whatever use of the response the matter seemed to him to require; it was called “a certain manner of opining (*opinamento*).”⁴ After receiving this document, His Eminence the Archbishop proposed to the Holy See that it be published under a prescribed title which would say that it contained responses obtained through the medium of the Cardinal Secretary of State.⁵ He replied that the Supreme Pontiff was rather of the opinion that it should merely be declared in the preface that, on account of the importance and difficulty of the matter, doubts had been referred to a certain consultor who was very well acquainted with the province, to be examined and that he might disclose what he thought concerning them.⁶ Thus it

happened that His Eminence the Archbishop refrained from publishing the document. But about six months later, on 22 March 1892, the superior of the Seminary which France has in Rome, Rev. Mr. Esbach, made it public in the periodical *La Science Catholique*, and at the same time designated it by the name *Document émané du Saint-Siège* [Document Emanating from the Holy See].

⁴ Here are the words of His Eminence Rampolla by which he transmitted the response: “The Holy Father, having ordered that these doubts be examined, had the opinion formulated which I herewith transmit to Your Eminence, so that you may make whatever use of it you will deem most opportune.”

⁵ The literal title was: “The Cardinal Archbishop of Mechelen, having proposed to the Holy Father certain doubts raised concerning the question of the wage treated in the encyclical *Rerum novarum*, received through the Secretary of State, His Eminence Cardinal Rampolla, the following responses” (de T’Serclaes, work cited, vol. 2, p. 107, note).

⁶ His Holiness replied “that Your Eminence could modify the preamble prefixed to the copy which you communicated to me, in the sense of saying that, the aforesaid doubts having been proposed concerning the question of the wage treated in the encyclical *Rerum novarum*, in view of the gravity and delicacy of the argument, a consultor, qualified to examine the aforesaid doubts and to manifest his opinion on the matter, was charged with studying them, which he promptly carried out, giving opportune responses to the individual questions.” *Opportune*, that is, in Italian, supplied in its proper time; in French, *qui viennent à point, à propos* [which come at the right time, to the point]. Thus Rev. Mr. de T’Serclaes, in the same place.

2. It is of the following tenor:

“In the encyclical *Rerum novarum* it is said:

“Granted, therefore, that the workman and the employer freely consent to the same agreement, and particularly to the measure of the wage, there is nevertheless always something underlying from natural justice, and this is greater and more ancient than the free will of the contracting parties: namely, the wage must not be inadequate for supporting a workman who is indeed frugal and well behaved.”

Doubt I.—By the words “natural justice,” is commutative justice understood, or rather natural equity?

To doubt I.—Speaking *per se*, commutative justice is understood.

Explanation.—The work of a workman differs somewhat from merchandise, just as a wage differs from a price. For the work of a workman is work proceeding from human liberty, and for that reason it induces the rationale of merit and the right to a wage or reward; and therefore it is far nobler than merchandise and a price, which are completed by exchange alone. Nevertheless, for the sake of clarity, the work of a workman is considered as a certain merchandise, and his reward or wage as its price. Nor without reason: for although the work of a workman is nobler than merchandise, it nevertheless retains the whole rationale of merchandise from the part by which it orders the wage to itself as its price. The teaching of St. Thomas, I-II, q. 114, art. 1, is very correct: “For that is called a wage which is recompensed to someone for the retribution of his work or labor, as though it were a certain price for it. Hence, just as to return a just price for a thing received from someone is an act of justice, so also to recompense the wage of work or labor is an act of justice.” An act, he says, of justice, namely, commutative justice. For just as purchase and sale, so also labor and wage are for the common utility of the contracting parties, since each needs the thing of the other. But that which is brought into another’s utility must not be a greater burden to one than to the other,

and therefore a contract of justice between the employer and the workman must be established according to equality of the thing, which is proper to commutative justice. (Cf. II-II, q. 57, art. 1.)

“But if the criterion is sought according to which that equality of the thing between manual labor and wage must be established by an employer, we reply: that criterion is said in the encyclical to be sought from the immediate end of the workman, which imposes upon him the natural office or necessity of laboring, and by the force of which he is clothed and fed for the suitable sustenance of life, and to which manual labor is first and principally ordered (in the same work, q. 187, art. 3). Therefore, whenever the work is such that the workman by his labor satisfies the aforesaid natural office of attaining the immediate end of his labor, but the wage for attaining this end—namely, for suitable food and clothing—is unequal, speaking *per se* and considering the nature of things, there is an objective inequality between work and wage, and consequently an injury to commutative justice.

“Two things, however, must be considered generally in this matter. One is that, just as the price of salable things is not punctually determined by a law of nature, but rather consists in a certain common estimation, so also one must speak concerning wages generally.

Hence, while the requirement arising from the rationale of the end—namely, suitable food and clothing—remains firm, either a moderate addition or a diminution is made or at least can be made to the workman’s wage from the common estimation, without injury to the equality of justice, just as in the price of merchandise a moderate addition or diminution from the public estimation is not regarded as removing the equality of justice (II-II, q. 77, art. 1, ad 1). The other point is that, in assigning the equality of justice between the wage and manual labor, one must attend not only to the common estimation, then to the quality and quantity of the work, but also to the duration of it, and likewise to the prices of the things which must be purchased by the workman for suitable food and clothing; but these prices are not the same everywhere.

“But if, finally, without injury to justice toward the workman according to what has been said, the employer is greatly aided by his labor, the employer can indeed, of his own accord and praiseworthily, give something to the workman beyond what is due; but this pertains to his honorable conduct, not to the fact that he is bound from justice. Namely, in our matter the principles which are given concerning a just purchase and sale have force (in the body of the article).”

Doubt II.—Does an employer sin who indeed pays a wage sufficient for the workman’s sustenance, but inadequate for supporting his family, whether this consists of a wife and numerous offspring or is not so numerous? If in the affirmative, against what virtue?

To doubt II.—He does not sin against justice; he can nevertheless sometimes sin either against charity or against natural honorable conduct.

Explanation.—From the very fact that, according to what was declared in the response to the first doubt, equality of wage and work is observed, the requirement of commutative justice is fully satisfied. But the work is the personal work of the workman, and not of his family; nor is it referred first and *per se* to the family itself, but secondarily and *per accidens*, insofar as the workman distributes the accepted wage among his own. Therefore, just as in this case the

family does not increase the work, so justice does not require that the wage due for the work itself be increased.

“He can sometimes sin against charity, and so forth, yet not generally and *per se*, but *per accidens* and in certain cases. Hence the response said ‘sometimes.’

“Against charity, not only in all those ways in which a man can sin concerning charity toward his neighbor, but also in a peculiar way. For the work of the workman yields an advantage to the employer. Therefore, whenever in particular cases he is compelled by the precept of charity to exercise the offices of charity, he is also bound to observe the order of charity. This order indeed makes workmen who perform prolonged labor for his benefit closer to the employer than other poor persons doing nothing for him by that very fact. Therefore, an employer capable of exercising the offices of charity must prefer his workmen, bestowing on them from charity what justice by no means requires, so that the wage thus increased from charity may become less insufficient for supporting even the workman’s family. These things, moreover, are said generally and as it were theoretically; for in practice one must not judge rashly whether the employer sins or does not sin against charity.

“Against honorable conduct, whose proper office is to recompense spontaneously, namely, and not from justice. We do not wish honorable conduct here to be understood as gratitude induced by a benefit received, for the work of a workman is not a benefit, since it is compensated according to the equality of the thing by a wage; but when the employer derives, in fact, a great benefit and advantage from the work of the workman, and according to the nature of the matter this is so, then he is in some manner bound from a certain natural honorable conduct to recompense by way of supererogation, as in the response to doubt I, § ‘But if, finally,’ while no right to that supererogation exists in the workman.

Doubt III.—Whether and by what rationale do employers sin who, using no force or fraud, give a wage lower than the labor furnished merits and than suffices for honorable sustenance, for the reason that many workmen offer themselves who are content with that small wage and freely consent to it?

To doubt III.—Speaking *per se*, against commutative justice.

Explanation.—It has been said that the work of a workman, although it is not merchandise properly speaking, can nevertheless, for the sake of clarity, be compared with merchandise, since in the order to equality of wage it has the whole of that which merchandise has in order to price, and something even more. Hence an argument from the less to the greater is rightly instituted. But in a purchase, speaking *per se*, it is not licit to buy a thing for less than what it is worth from the common estimation, with due regard for circumstances of time and place. Therefore, *a fortiori*, it is neither licit, but is against justice, to give a wage lower than the labor furnished merits, that is, than suffices for honorable sustenance. Concerning this doubt, let the encyclical, pp. 38 and 39, be consulted.

“I said ‘speaking *per se*’; *per accidens* particular cases can be given in which employers can licitly hire workmen who are content with an inadequate wage. Suppose an employer would receive either no advantage at all or one insufficient for the suitable sustenance of his own life if he were to bestow an adequate wage, indeed he would even incur harm if he were to do so. In

this and similar cases, even if at first sight the question is one of justice, it is in truth rather a question of the charity by which an employer provides both for himself and for others. (Cf. the explanation to the first doubt, § ‘But if, finally.’)”⁷

⁷ Thus in *Science Catholique*. Rev. Fr. Fristot (*Études*, May 1894, vol. 62, p. 147 ff., and Jan. 1901, pp. 76–77, note) nevertheless warns that a certain note must be taken into consideration, which was described thus in the official copy: “N.B. The Most Learned Cardinal de Lugo, in the disputation cited, contains nothing that contradicts what has been explained thus far; indeed, he openly favors it.” The citation was, in the supplicatory booklet, disp. 29, no. 62, which passage we cite below, no. 440, difficulty 4.

3. We must now speak concerning the authority of that document, about which we previously said that doubt was not absent and after which we shall explain why we remain in doubt. For from the historical circumstances these things are easily perceived: it is not a response of the Holy See; but the person of the writer, from his dignity, learning, and the role which he took in composing the encyclical *Rerum novarum*, gives the document the authority of a grave and prudent man; finally, its communication made through the Holy See certainly shows that the opinion then appeared probable, so that it is indeed licit to attack and refute it with reason, but not to despise or reject it altogether. Thus, approximately, Rev. Mr. de T’Serclaes, in the places cited, with whom Rev. Mr. Esbach already agreed;⁸ and likewise Rev. Mr. Nicotra, in the little work *Le minimum de salaire* [The Minimum Wage], art. 1.

⁸ Letter to the periodical *Le Monde*, 24 Jan. 1895.

4. Its correct interpretation is less agreed upon.

a) There are those who think that this response is opposed to those who judge that the wage which is *per se* the minimum from justice is the **absolute family wage**. The distinguished Turinaz,⁹ and Rev. Fr. Antoine,¹⁰ hold this; Rev. Mr. de T’Serclaes, himself nevertheless a patron of the family wage, rather favors them.

⁹ *Le salaire familial et le C. Zigliara* [The Family Wage and Cardinal Zigliara].

¹⁰ *Cours d’économie sociale* [Course of Social Economics], 1st ed., p. 570.

b) Others think that that doctrine is not touched by the response. Thus Rev. Mr. Esbach, cited and approved by Mr. Verhaegen, place cited, and Mr. Périn, work cited, 2nd ed., p. 304, note. And indeed, it cannot be denied that doubt II was proposed in such a manner that inquiry was made concerning the **necessity of varying the wage according to the number** of persons of whom the family was composed: “Whether this consists of a wife and numerous offspring, or is not so numerous.” But this, as we shall see, is the rationale of the **relative family wage**, which no Catholic contends is owed *per se* from justice. Therefore, it can happen that the mind of Cardinal Zigliara was averse to the obligation of an absolute family wage; this, nevertheless, is not shown **formally** by this response.

However the matter stands, it nevertheless must not be omitted that Rev. Mr. Esbach was able, at almost the same time, to profess that, having been instructed by most eminent authorities, by the words **for supporting the worker** in the encyclical was designated a frugal and honorable workman, not infirm in strength and situated in the ordinary circumstances of family.¹¹

¹¹ “I agree to answer your question, not at all because I flatter myself that I shall bring to it from my own resources any new light, but because, having been informed in a high place concerning the exact sense of this passage of the pontifical document, I have confidence that I shall say nothing to you that is not in conformity with the pure truth.

And Rev. Mr. de T'Serclaes himself testified that this same doctrine was by no means unwelcome to the Holy See.¹²

¹² "Other facts testify sufficiently that the Holy See is very far from being hostile to the aforesaid doctrine (concerning the family wage)." Letter to *Bien Public*, 20 Jan. 1895.

421. Conclusion concerning the mind of the Holy See. From what has been said, the following is sufficiently apparent, unless something deceives us:

a) According to the doctrine of the encyclical, there is some just recompense of human labor which is the minimum, and it is defined by the suitable sustenance of at least the workman himself who hires out his labor.

b) But the question concerning the family wage is still left undecided, so that here one must appeal to that well-known saying: "In doubtful things, liberty; in all things, charity."

This, I say, is what must be answered insofar as authority is concerned. For, to say plainly what I think, the matter itself does not seem very involved, nor of such a kind that Catholics would not easily have thought the same, if notions wrongly understood or a harsher manner of speaking had not cast darkness over it or estranged the minds of some from it.

Therefore, this is what we now desire most: that the weight of the reasons be weighed with the same equity with which they will be proposed.

"According to the encyclical, the rule of the just wage is found in the needs of the workman."—I distinguish: the remote and fundamental rule, though not adequate;—I subdistinguish: and the encyclical means the sober and honorable workman, finding himself in normal conditions of health and family,—I concede it. Cf. *Science Catholique*, 1892, p. 385.

§ 2. First Approach to the Disputation

We shall propose three things in this place: notions, opinions, and a censure of certain arguments.

I. NOTIONS

422. What it is that we are investigating. 1. Lest our entire discourse be weakened by a bad understanding, we judge that it must again be warned that it is not concerned with the lowest common assessment of the price of labor—for above, no. 340, we showed that for any thing there is distinguished a common just price which is the highest, middle, and lowest—so that we do not contend that he who has paid the wage which we shall establish here as the minimum among just wages has already given what is sufficient. But whether it often happens that this rationale of the minimum wage differs little from the wage which in common usage is held to be the lowest among just wages, we shall investigate in the scholium; here, however, we formally omit it. But although it is not repugnant in itself that other things, because of the abundance in which they are available, become so cheap that nearly all their value is taken away, we ask whether human labor is likewise tossed about according to the number of those who offer it for hire, or whether, on the contrary, natural justice, which we call commutative, prevents it from being depressed below a certain measure for this reason.¹

¹ Then that famous saying of Cobden would hold quite absolutely: "Labor becomes cheap if two workmen pursue one employer; but if, on the contrary, two employers pursue one workman, labor becomes dearer."

2. Nor, again, can the state of the question be placed as not a few who are opposed to our conclusion imagine it: **whether or not labor must be recompensed according to its value.**² For we affirm this of our own accord,³ and, we think, no one who has attended even moderately to the things thus far handed down will deny it.

² Therefore, difficulties of this kind appear most vain: "Need is not a title for demanding a wage above the value of the labor": for this is conceded; but the supposition is denied, namely, that the value of the labor is exceeded by such a wage. Moreover, no one has ever contended that the same wage must be paid for labors of unequal merit, as Rev. Fr. Castelein objects, work cited, p. 376.

³ Indeed, the argument of the Most Illustrious Bishop of Bruges, in the observations cited, proceeds from this very first beginning.

3. But this is called into question: **whether or not by nature there inheres in human labor some value which is the minimum.** Rightly and deservedly, indeed, our adversaries demand that we prove by valid arguments that the norm which we establish as to be followed is true; but while they themselves wish to estimate labor from an agreement alone, or from the custom of a shop which perhaps is the only one in a certain region, or from the price of things or the number of those offering labor, let them beware lest they tacitly posit that which would have to be demonstrated by them, and so fall into a pure and simple begging of the question.

Therefore, to encompass the matter in a few words, the question at present is not formally one concerning a positively just price, but rather concerning its negative definition: concerning, I say, a lower limit of the value of labor, if there is one, and what it is.

423. The workman we establish as one who, sound in strength and adult in age, possesses that knowledge, art, and skill which, according to the culture of the state, seems able to be demanded of all.

424. The labor we establish as necessary to the hirer for the intended end. Therefore, if someone from charity enrolls another among his servants beyond the customary number, or, having been asked, entrusts to an able-bodied man a work for which either a woman or a boy could appropriately suffice, we do not wish to transfer our conclusion concerning the wage to him.

425. The material rationale of the wage is not always contained wholly in counted money, but advantages of another kind, whether formally or tacitly promised and agreed upon, can be regarded as part of the wage.⁴ To this belongs, for example, that more ample manner of living which domestic servants are accustomed to enjoy, and the contribution which is paid in not a few shops for preparing a pension by which provision is made for old age or misfortune, provided that it is then sufficiently assured that the workman cannot be dismissed at pleasure unless the damage from the loss of this sort of hope is compensated to him. Therefore, we said **promised and agreed upon**, lest subsidies of charity perform the function of a just price.

⁴ Mr. Périn writes elegantly, *Premiers principes*, p. 285, 2nd ed.: "The wage is the sum of the useful objects which are attributed to the workman in recompense for his labor."

It is also evident that how great the wage of labor is cannot be estimated from money alone, but that one must in addition observe the varying value of money itself, or how many and how great useful

things can be acquired by means of money. And thus they distinguish the **real wage** (*salaire réel*) and that which is a wage in name only (**nominal**).

426. On the family wage. 1. The name itself is not approved by many, who think that what they intend is not expressed by these words and that occasion is given for no small confusion.⁵ We do not wish to dispute this, since we prefer not to depart from an accepted manner of speaking, even one which seems less suitable.

⁵ "The term *family wage* must be banished from the vocabulary of sound political economy." Périn, *Premiers principes*, 2nd ed., p. 303, note. Nor is the name pleasing to the distinguished Mr. Waffelaert, article cited.

2. But the thing which is subjected to these words must be carefully considered. Come then, a threefold rationale of it is distinguished, whose common point is that in the estimation of the wage not only the workman, but also in some manner his family, is regarded. Therefore:

a) The **relative family wage** is so called because it varies according to the persons of whom the family is composed and according to their necessities. The labor furnished is then regarded less than the necessity of the one furnishing it, and it is less a recompense of labor than a subsidy of need.

b) From this the **absolute family wage** plainly differs; it is described as such a recompense of labor by which a frugal and honorable workman, without neglecting the aids which thrift and the moderate cooperation of his wife and children can bring, is able to provide decently for himself in the varied circumstances in which he will, *per se*, find himself in the course of life. Among these circumstances are found the married state and customary offspring.⁶ This is its genuine and formal rationale, which we shall approximately defend in our conclusion. But what it seems to comprise materially, we shall state more explicitly in the corollaries, no. 444.

⁶ Those somewhat distort this rationale, or expound it inadequately, who call that wage absolute whose present amount suffices for present necessities.

c) Finally, the **collective family wage** is understood as the sum of the wages received by the order of workmen which, with the aid of various subsidies,⁷ suffices to support the workmen with their families. Therefore, it is called collective in two ways: **α)** Insofar as the sufficiency is not that of individuals taken distributively, but, in general, of the whole body of workmen; **β)** insofar as an account must be made not only of the wage but also of subsidies which are paid under a title other than commutative justice, whether the employer or master himself, from his humanity or equity, prepared them and determined that they be distributed, or whether private charity or public providence undertook the office of supplying what is sufficient.

⁷ Including those which are supplied publicly, as the *Collationes Tornacenses*, 1895, no. 353, explain.

N.B. Take care lest, as some have begun to speak, you oppose the **personal wage** to the **family wage**. For we call every wage personal insofar as it is the exchange of the personal labor of the one who is hired and insofar as it is owed to the workman himself, not to the family. Moreover, the father, insofar as he provides for his own, is not so distinguished from his own that he is not rather to be regarded with them, in moral consideration, as one person or subject of right. Cf. no. 39.

If, however, some defend the relative family wage, they seem, with the person of the workman omitted, to assign the wage immediately to the family. Therefore, at most, against them the

expression **personal wage** and an argument drawn from this name can be employed. The rationale of a wage which is enough to support one man could more suitably be called **singular** (*individuel*).

II. OPINIONS

427. Liberal tenets. All those who hold liberal tenets, unless they omit the question concerning a limit while professing that their own consideration of the matter is economic and not moral—as not a few economists do—deny that any limit of what is just can be drawn from the source of nature. I say **of what is just**, for they concede some necessity of fact, so that the workman may be supported by his labor, and indeed may be able to beget offspring, lest the very order of workmen perish. That this doctrine is most foreign to the encyclical *Rerum novarum* is sufficiently evident of itself.

428. Concerning those who establish the price of things as the absolute norm.

We shall speak again of this opinion in no. 432. Here we shall especially warn that, as it seems to us, those do not sufficiently answer to the mind of the Supreme Pontiff who altogether reject the necessities of the workman as a criterion of the just wage, although they too contend that sustenance will not be lacking to the workman from another absolute norm, which they place in the value of labor estimated from the price of things. For to one reading the passage of the encyclical cited above, it is easily evident that the conclusion concerning a wage which is inadequate **for supporting the workman** is artfully coupled and connected with the argument taken from the workman's necessity. Therefore, if you pass this over entirely, you must judge the conclusion of the Pontiff to be formally false, even if perhaps you preserve for it some material truth.

Catholics must at least hold this declaration of the encyclical, which Génicot, *Theol. mor.* [Moral Theology], vol. 1, no. 646, after the Roman response to doubt I, hands down thus:

“It [labor] is dissimilar [to merchandise] insofar as the active power by which labor is furnished adheres to the person (the rationale of personality), and, for most men, it is the sole means by which they acquire for themselves the things which are necessary for the various uses of life, and especially for their own preservation (the rationale of necessity). Therefore, the contract of hiring labor must not be withdrawn from the general norm by which a just price is established in a contract of purchase and sale, namely, that from the very nature of things and antecedently to a private agreement (natural justice), labor be compensated according to the true value which it has in concrete circumstances. But from the special rationale of necessity, which cannot be separated from human labor, it comes about that, commonly and with special circumstances excluded, the value of this labor cannot justly be estimated below that price which suffices for supporting a frugal and well-behaved workman.”

This formal regard for necessity is lacking in the rules and rationales of Rev. Fr. Castelein,⁸ which we showed above do not regard anything except profitable labors. Moreover, it seems better to us to abstain from a lengthy statement of his opinion. For the principles upon which it rests have already been discussed above, no. 406, p. 532, and will be discussed below, no. 432, p. 567 ff. But in his conclusions he now scarcely seems opposed to our tenets. For in his own behalf he appeals⁹ to an author who in his writings openly says that a wage sufficient for a father of a family is owed *per se* from commutative justice. Cf. also below, no. 439, argument 3, no. 6.

⁸ This appears still more from the manner in which, on p. 379, note, and p. 397, he wishes to vindicate himself from contradiction with the encyclical.

⁹ *Droit naturel* [Natural Right], p. 322, note.

429. Concerning those who appeal to legal justice. Others formally place the lower limit of the just wage in the sustenance of an individual workman. At times they understand this sustenance quite strictly as those things which seem required in the present.¹⁰ But at the same time they add that the **absolute family wage is owed per se from legal justice**: for this rationale of a wage is demanded by the common good.

¹⁰ "The minimum just wage is equal to the daily subsistence of the workman under normal conditions." Antoine, *Cours d'économie sociale* [Course of Social Economics], chap. 18, art. 4, p. 601 (2nd ed.).

They are accustomed to support the positive part of their opinion, by which they require sustenance, with this argument: An able-bodied workman hands over to the master of a business all the powers of his body, morally speaking, to be used. Therefore, the exchange will not be just, since it rests wholly upon equality between what is given and what is received, unless those powers are restored to the workman by the employer. But they are restored through the sustenance by which he refreshes himself. Therefore, we have this equation:

The wage which is the minimum = Powers to be used = Sustenance

Lest we conceal or cover over anything, this kind of argument pleases us little, whether we consider its **antecedent**, its **consequent**, or the **inference** itself.

As to the antecedent. If there were question of a beast of burden, we would well understand all its powers to be destined for the man using it, and neither food nor rest to be supplied to it except insofar as they are directed to new labor. But the body and powers of the workman, who is a man, have a nobler use. Therefore, we can by no means be brought to refer every cessation from servile labor to the utility of the hirer. Rather, once some suitable time has been granted to labor, during the remainder of the day or time the workman seems to us primarily to spend his time, to rest, to use either mind or body, and to live for himself and his family. Since these things are so, the antecedent by which all his powers were said to have been handed over for the use of the hirer of labor does not seem true.

But if they say that these powers are nevertheless handed over during the time in which the craftsman could have worked for himself, they will easily see, if they attend for a little while, that they formally change the argument. For why is a complete restoration of the powers owed on account of that partial use? They will find no other rationale except either that it is commonly valued at least so highly, or that from the right ordination of nature it is deservedly concluded that such fruitfulness belongs to human powers by nature that the craftsman, fruitfully expending his labor upon himself, would *per se* have gathered just as much, so that this recompense is a certain compensation for gain ceasing. But then we shall again ask whether something greater can be gathered from this ordination of nature. Concerning this, consult the arguments of the thesis.

As to the consequent. That restoration of the powers, if this alone is owed, can be made at the least expense if the employer should wish aptly to select foods,¹¹ and to establish common meals and sleeping quarters for the workmen. Why would it be forbidden by this norm to assess the price of the sustenance? But in this way the strict obligation falls back upon that wage which is branded with a

certain infamy by the name *salaire de famine* [starvation wage], *Hungerslohn* [hunger wage], and pertains to the blameworthy *sweating system*. Nor will any Catholic depress the lower limit of justice to a wage of this kind. Therefore, such reasoning is futile.

¹¹ A certain landlord from England acquired celebrity for himself by publishing methods of feeding workmen sparingly.

N.B. This kind of reasoning nevertheless seems to us to have been the cause why many who define the lower limit by the workman's own sustenance have, openly or tacitly, looked only to the workman's present need, and have not always dared to affirm as owed *per se* a wage by which he is able to reserve something for providing against probable infirmity or old age.

The **inference** itself does not seem correct. We have already disclosed one defect in it by disproving the antecedent. Moreover, unless you make the workman's powers barren in themselves like money, the equality of what is given and what is received requires not only the restoration of the powers but compensation for their use. It is truly astonishing that, in this age of ours, in which the gratuitousness of a loan of money has been so greatly doubted, the labor of a craftsman has at the same time been so valued that it appears to be the object of a barren loan.

If, with Rev. Mr. de Gryse,¹² they understand this **obligation of legal justice** in such a way that they signify the duty of the ruler to introduce by suitable means such an economic order in which the family rationale actually flourishes, while meanwhile leaving the matter to the equity or humanity of private persons, they will have said something definite which can probably be held.

¹² *De contractu conductionis operarum* [On the Contract for the Hiring of Labor], pp. 47–49.

But most subject this force to the word, so that, with every law excluded, they place in private persons themselves a present and grave obligation of legal justice to pay *per se* this wage.

Thus the Rev. Fathers Antoine, place cited, p. 607; Génicot, place cited, no. 647; and Rev. Mr. Keesen, *3e Congrès de Liège*, 1st section, *Terminologie sociale* [Social Terminology], p. 98.

We judge that they speak confusedly or are deceived by the word.

For, insofar as we understood from St. Thomas, Thesis IV, legal justice is a special virtue insofar as, from its proper intention of the common good, it makes some act of another virtue necessary. Therefore, if you speak of an obligation of legal justice, you tacitly speak of an act of another virtue commanded from the common good. Consequently, in order that you may speak distinctly, you must declare at once the act of which virtue is commanded. Thus, if Christians are bound by legal justice on certain days to be present at the sacred rite and to abstain from meat, these obligations are ascribed by theologians to religion and to temperance. In the same manner, in our matter, the special virtue whose act is necessary under the command of legal justice must be indicated; I mean that virtue in whose order the precept is made. But in the present case, what else is at issue except a suitable recompense of the workman? Therefore, if you think that a family recompense is required from the common good—that is, **such an exchange for labor**—it is necessary to acknowledge that this pertains proximately to commutative justice. Moreover, by what argument, I ask, do theologians demonstrate absolutely grave matter in theft? They appeal to the common good. Nevertheless, they say that the guilt is opposed to commutative justice. We must not depart here from that wisdom.

But if they wish to find a title distinct from the obligation of strict justice, which is denied, and from charity, which they admit does not suffice, they strive in vain to increase the catalogue of virtues by

some new rationale of virtue.

In vain, I say, yet not without detriment to the good cause. For if the rationale of the common good is posited as proximately and immediately producing in employers or masters a special obligation to pay a family wage, lest the families of the workmen lack suitable sustenance, this rationale and the conclusion joined to it seem able to be restricted to those workmen who are actually joined in marriage and to vary in degree and force according to the variation of the family itself. Indeed, it could be defended with Rev. Fr. Castelein, p. 384, that the common good is better procured by subsidies accommodated to the necessities of individual families. Therefore, **a)** the employer will easily think himself immune from the obligation as regards bachelors, and from this there will soon arise in him the will and zeal rather to hire such persons; **b)** the whole matter will fall back upon a certain quite ill-defined obligation of a collective wage, by which workmen, unless the family wage is the customary wage (*salaire courant*), become entirely subject, as regards the necessities of their household, to the benevolence and humanity of the masters.

430. Concerning those who ascribe the absolute family wage to commutative justice. Not a few today think that, *per se*, in the right and ordinary state of affairs, at least the **absolute family wage itself is owed as the just price of an adult workman**. This opinion has acquired distinguished patrons: Cardinal Manning, *Commentarius in Encyclicam* [Commentary on the Encyclical]; Liberatore, work cited, pt. 2, no. 89; Marrès, *De iustitia et iure* [On Justice and Right], bk. 4, no. 353; Rev. Mr. Nicotra, *Le minimum de salaire* [The Minimum Wage], art. 2; Steccanella, *De Communismo* [On Communism], bk. 2, chap. 15; the Rev. Fathers Lehmkuhl, in the little work cited, and Biederlack, *Die sociale Frage* [The Social Question], no. 99; Rev. Mr. de T'Serclaes, in the letter cited to *Bien Public*; *Collationes Tornacenses*, 1895, no. 353; Messrs. A. Verhaegen, *Le minimum de salaire*, and Esbach, in a letter inserted in that little work; Charles Périn, *Premiers principes* [First Principles] and *Note sur le juste salaire* [Note on the Just Wage]; Rev. Fr. Dehon, *Manuel social chrétien* [Christian Social Manual]; Rev. Messrs. Gayraud, *Questions du jour* [Questions of the Day], pp. 171–176; and Pottier, *De iustitia* [On Justice], diss. 3, no. 195 ff. D'Hulst, 6th conference at Notre-Dame de Paris, 1896, does not oppose them. Nor is anything else elicited from those things which Taparelli has concerning the recompense of officials, *Saggio*, and so forth, vol. 2, no. 1143, compared with vol. 2, no. 428.

The distinguished Bishop of Bruges also subscribes in substance to the same opinion, and indeed in the manner which pleases us more, as we shall say in the conclusion.

431. Concerning the patrons of the relative wage. But that the relative wage is owed from justice can be contended only by **socialists**, or rather **communists**, from their norm of distribution, by which each would contribute according to his powers but would receive according to his necessities.¹³ We treated it sufficiently in Thesis V, concerning just distribution, and in Question V, concerning socialism. Therefore, we may refrain from saying more. For since the relative wage is defended by none of the Catholic writers, the haters of the family wage waste much oil when they are wholly occupied in refuting this rule of the just wage.

¹³ "That would be the extreme claim of pure socialism, attributing to each worker a recompense proportioned to his needs." Périn, *Premiers principes*, 1st ed., p. 297; 2nd ed., p. 303.

Nor is there an office either of equity or of charity by which the employer is bound to pay this reward; this is well shown by Rev. Fr. Castelein, pp. 369–370.

III. ON CERTAIN ARGUMENTS

In order that our approach to the truth may be simpler and more direct, it is useful also to observe some things concerning the very arguments which are customarily brought forward in this matter.

432. Whether the lower limit depends upon the price of things.¹⁴ You would proceed from a false beginning if you were to argue in such a way that you seemed then for the first time to value human labor economically, or to judge it worthy of a price, from the point at which it increases the value of other things or is employed in producing riches. For we have already warned that labor has value of itself—where we treated the difference between labor and money, no. 415—and it is altogether manifest. Otherwise, every value and every just price would be absent from domestic service and from many unprofitable labors. But shall we dare to deny to the noblest of things—to the use, I say, of the human person—that weight of estimation which we do not deny inheres in iron, silver, wool, and the cheapest things, and subject the price of human labor, as to a superior norm, to the price of other things? Therefore, just as one who wishes to destine things valuable from some other source to the exercise of his craft—for example, iron to be converted into a workshop machine, or a horse to be assigned to transporting merchandise—must, if he buys or hires them, repay to the seller or lessor this value which already exists, in addition to that which is accustomed to accrue from destinations of this kind, if their use has been frequent enough (cf. nos. 350 and 380, at the end); so an employer cannot value labor hired by him at nothing before it serves the workshop and define its price absolutely from that use, but must first consider of what monetary compensation it is already worthy of itself.

¹⁴ Observe that by the patrons of this opinion not just any things are taken, as though you were to say, “the just wage is related to the price of things or of subsistence,” but rather **merchandise**, that is, the things made by workmen: “the current price of the products of the workman’s labor.” Castelein, *Droit naturel*, p. 313.

From this it is perceived that **an adequate rule of the just wage cannot be placed in the price of merchandise.**¹⁵ For the price by which any things whatsoever that possess value of themselves are estimated is, at least in part—that is, as regards the lower valuation—by its nature prior to the price of the things produced by them. From a profitable use which is common there comes an **accession** of price, not its **first generation**. Therefore, those who have some power in defining the prices of merchandise do not so much estimate materials from the price of the things produced as accommodate the price of the things produced to the value of the materials and to all expenses.¹⁶

¹⁵ Rev. Mr. Gayraud writes excellently concerning this matter, *Questions du jour*, p. 167.

¹⁶ At the same time, rationales of this kind are shown to be fallacious: “The employer ... intends to hire the workman’s labor formally on account of the product materially produced” (Rev. Fr. Castelein, work cited, p. 377). For although he is led by no other intention to buy wool from which he will make cloth, he nevertheless must pay the seller of the wool the just price of the wool. Why is he any less bound to pay an equitable stipend—I mean that which human labor already merits of itself?

Moreover, it is evident from fact and practice that several things are sold at a greater price, for example, in England than in Belgium because in Belgium the workmen themselves are accustomed to be hired at a lower wage. Therefore, how can the same wage which is the cause why merchandise costs so much depend in turn upon the price of the merchandise?

Therefore, the opinion which wishes instruments and materials to be estimated from the price of their fruits is **economically false** as regards other things; but, as regards human labor, it **prepares**

the way for inequity.

For while the sellers or lessors of other things, and even lenders of money themselves, are usually those who can reject harsher conditions, workmen not rarely have nothing available except the protection of their right. If, by denying the right, you virtually remove this protection, you now abandon them to the pleasure of the masters of businesses.

Therefore, you would also be deceived if you thought that, by this norm according to which you have said that the wage must be estimated absolutely from the price of things produced, you had warded off the odium into which those fall who judge that the wage varies according to the greater or lesser number of workmen.¹⁷ For one may ask whether or not the masters of great workshops, who have some power in establishing the price of merchandise, and contractors themselves when contracting for works, must strive from commutative justice itself that the selling price of things or the contract price be such that they can pay a suitable wage for supporting the workmen. If you affirm it, you concede in substance to our opinion and make the norm of the just wage prior to the price of things itself. But if you deny it, then, with justice intact, employers and hirers of workmen will be able to use every advantage which they will have from the very number of those offering their labor in order to pay a lower wage and diminish the price of things. And thus the odious opinion returns: that the price of labor depends upon the labor offered or sought.

¹⁷ Castelein, *Droit naturel*, p. 535, note at the end.

It is therefore plainly necessary to establish beforehand for those who, either alone or jointly,¹⁸ possess some influence in markets a norm according to which they must judge the value of human labor. This is what is proposed to us in the present question. Almost the whole question of the just wage then easily returns to this: whether, without injury, any price of labor can be established at which there is hope that there will be those who hire out their labor, or whether, on the contrary, there is some innate value of that same labor, and what it is, withdrawn from the effect of competitions,¹⁹ which consequently is the lower limit of its just price.

¹⁸ We say this lest they seem to be few. And indeed daily practice shows that employers, if they agree not to sell except at a fixed price, have no small power to obtain an equitable valuation of things.

¹⁹ There will be a twofold cause of this necessity: either because other employers, and so forth, have abused their power so as to impose harsher conditions upon the workmen, or because the whole economic state of affairs is *per accidens* unstable and calamitous.

Once this is defined, we shall indeed concede of our own accord, as we did in the preceding thesis, that those who are pressed by the necessity of submitting to the determination of others are excused from injury if, because they are compelled by a lower price of merchandise, they promise a lower wage: we shall say that they do not indeed pay what is just, but are excused from paying what is just (cf. nos. 343, 349); but take care lest, by confusing the causes of excuse and of objective justice, you wish the just wage to be estimated adequately by the price of things, in which, when it becomes excessively low, there is no longer anything but a means of avoiding the crime of theft, but by no means a norm of the lower limit.

433. Rationales that are too particular. Those rationales which do not have force for the whole range of hired labor but only for one kind—for example, profitable arts—are **inadequate and suspect**. Inadequate, because the present matter pertains to all kinds; and also suspect, because, by

the fact that they are proper to a certain kind, they seem to regard less that common value of all human labor which is at issue in the question of the lower limit than a special accession of price from some peculiar cause.

434. What if you argue from the encyclical, from the duty of maintaining oneself and one's own.

1. In the matter of the family wage, the encyclical *Rerum novarum* cannot formally be appealed to. We gave above why we think thus; and that is now conceded by most.

2. From the duty of maintaining oneself and one's own to the right of obtaining a stipend by which it may be fulfilled, the immediate inference is not correct. For if the conclusion is posited as immediate, it must extend as widely as its principle. Therefore, the right of obtaining that stipend would have to be defined in the same manner as the duty of maintaining oneself and one's own; and whether that duty pertains to more or fewer persons, whether *per se* it comprehends only children and wife, or *per accidens* is extended to parents, similar extensions *per se* or *per accidens* will be made to the right itself. For, once the major premise is conceded, what would you censure in this reasoning: The duty of supporting demonstrates a right of receiving for labor a wage by which sustenance is procured. But Titius has the duty of supporting ten persons. Therefore, a right is demonstrated for Titius to receive in his stipend the sustenance of ten persons? You cannot escape this force of the argument unless you appropriately restrict the major premise of the syllogism, and thus show that a middle term must be interposed between the conclusion and the principle itself; a middle term, I say, by which it may be suitably tempered.

Therefore, we think that something is lacking in the argument of Rev. Mr. Pottier when, work cited, diss. 3, no. 227, he establishes the principle thus: "Where nature has imposed a duty and one means has been given by nature for fulfilling it, the one upon whom the duty has been imposed has a strict right to that means"; and then, by means of the minor premise, which from nos. 205 and 217 may be proposed thus: "But for the workman the stipend of labor is the one means given by nature for fulfilling the natural duty of supporting himself and his own," he concludes that there belongs to him the right of obtaining a wage by which he can suitably support himself and his own. For the distinguished professor cannot avoid the consequences concerning the relative wage, and so forth, which he rejects in the following numbers, except by denying or distinguishing one or the other premise, and at the same time acknowledging that the reasoning is not aptly expressed.

435. Concerning the argument from analogy. Nor does that which is said concerning the workman's own person seem able to be immediately transferred to the matter of the family. For it cannot be denied that there is some difference between an obligation which is imposed by nature and another whose cause is free, so that it is not suitably undertaken by all; or, if you prefer, between a duty which strictly belongs to individuals and another which in reality will belong only to the greater part of men, that is, to those who are joined in marriage.

436. What must first be regarded. Indeed, rationales for demonstrating and teaching the family wage will remain of little efficacy unless they persuade that this recompense is consonant with the value which inheres *per se* in the labor of an adult man. Otherwise, adversaries will always occur, contending not without reason that labor must not be recompensed from justice except according to its value; for this is the perpetual rule of just exchange.

§ 3. Formulation and Arguments of the Conclusion

THESIS XXIX

The lower limit of the wage by which the labor of an able-bodied and adult workman is to be exchanged is the stipend which *per se* is suitable for a father of a family.

437. I. State of the Question. 1. The intention of the thesis, therefore, is wholly concerned with defining the value which inheres *per se* in every human labor, whether it has a profitable use or not, and which consequently must be called its most proper value and the minimum among true values. We contend that this value is that **absolute family** value described above and to be explained more fully below.

Nevertheless, we defend this position in such a way that we do not deny the probable, although extrinsic, force of the opinion which places the limit in a suitable recompense for an individual man.

2. Opinions. We have already said, no. 430, to whom we subscribe.

Opposed to us are: **a)** All those who, adhering to the tenets of the liberal school, deny every objective rule of value, or admit only the fatal necessity of some economic law; **b)** those who establish the sustenance of one man as the lowest price, and at the same time deny every obligation of a family wage. For those who maintain that this is owed from a present office of legal justice differ from us almost only in words and in an ambiguous manner of speaking; **c)** communists, who defend the obligation of a relative family wage, if indeed they concede any wage. For all those who follow the banners of some kind of socialism are rather opposed to the form itself of an agreement of this kind.

3. The terms are explained.

The lower limit: that is, the sum below which an objectively just price cannot remain; not, however, one which is always sufficient, or from paying which no rationale excuses *per accidens*.

Of the just wage: we mean commutative justice.

By which labor is to be exchanged: for the discourse concerns hired labor.

Of an able-bodied workman: By able-bodied we understand one who possesses strength and that knowledge and art which, on account of a more perfect civil culture, can be morally common to all. We do not speak of one whom in French you would call *un déclassé* [a person who has fallen from his social station].

And adult: We take as adult one who is of the age at which persons in the region are accustomed to be joined in marriage and to have children, whether he has in fact taken a wife or has remained a bachelor.

Is the stipend which *per se*: By these words we indicate that we regard the ordinary circumstances in which a father of a family is accustomed to find himself. Therefore, we do not require that wage which would be needed for an extraordinary number of children. Observe that we do not say an **average family**. For we do not judge this to be said accurately, as we shall explain later, no. 445. Rather, we posit a family whose burdens are morally regarded as ordinary.

Is suitable for a father of a family. Therefore, we do not say a wage by which the sustenance of the entire family can be procured, or one which always actually corresponds to present necessities, even

with the just assistance of the wife and children, but such a wage that a frugal and honorable workman can, by employing the fruit of his thrift and that which he deservedly expects from the work of his wife and children, provide decently for himself and his own—as they say, moderately, according to his condition.

II. PROOF

438. Preliminary safeguards of the arguments. Three things seem first to have to be proposed, of which there will be an almost continuous tacit use in the argument, so that ignorance or forgetfulness of them would weaken the credibility and clarity of the rationales.

1. Since all justice has a mean of the thing (no. 36), while commutative justice, wholly free from every regard for persons, compares thing with thing, it is altogether manifest that the wage by which human labor is to be exchanged from justice does not vary whether it is to be given to a bachelor or to a father of a family whose offspring are few or many in number. For under this title of justice, the labor alone must be compensated, whose value must depend upon the rationale of the labor itself and not upon the quality of the one laboring. Therefore, the family wage, if any such wage is owed from commutative justice, can be neither collective nor relative, but absolute; and the same right of obtaining it avails for all who furnish labor not unworthy of that price, whether they have a wife or not.

2. **The married state is so much the common state of men** that nature has willed there to belong *per se* to all fully adult persons a morally unimpeded faculty of entering that state. The following prove it: **a)** The powers of begetting children bestowed *per se* upon all, and a certain proper insufficiency by which *per se* either sex needs the assistance of the other, so that both spouses effect something one and as it were one first complete being; **b)** the greatest propensity innate *per se* in individuals toward conjugal love;¹ **c)** the common necessity of that state for preserving morals. The worst morals generally accompany celibacy which a superior rationale has not commended to someone. Therefore, the Holy Fathers extol perfect chastity as something angelic and above human powers; **d)** the universal and perpetual fact.

¹ It is already read in Cicero, *De finibus* [On Ends], bk. 1, chap. 16: “The desires which proceed from nature are easily satisfied without any injury.”

Moreover, that state also induces *per se* the condition of a father of a family.

3. **A father is *per se* ordered to supporting the family.** (St. Thomas, II–II, q. 101, art. 2, ad 2.) At first the children are supported from the very body of their parents, and for a long time thereafter they cannot even beg alms for themselves. Therefore, if some father speaks of **his own necessities**, all understand also the necessities of his own, which, by theologians as by the common people, are held in an equal right and place. Hence, for example, the necessity of the family, like one’s own need, excuses from restitution.

Confirming this, the distinguished Mr. Waffelaert, place cited, has the following: “The workman may reckon as his subsistence—his complete subsistence—that of a workman who is a father of a family.”

439. B. Arguments.

Argument 1. From common estimation. The norm of the value of things and of human labor is common estimation (Thesis XXV).

But: Common estimation does not permit the wage of an able-bodied and adult workman to remain below the stipend *per se* suitable for a father of a family.

Therefore: This is the limit of the just stipend of an able-bodied and adult workman.

The minor premise is proved. For the following estimate thus:

a) **Workmen**² and all those who hire themselves out for a stipend; unless they have perceived in an unstable state of affairs or in extraordinary circumstances in which they themselves find themselves a cause of exception, they break forth into complaints and murmuring if they are hired for less;

² “The workers, contrary to the economic datum, did not cease to claim that the wage ought to be regulated by their needs, not by the relation of supply and demand.” Ém. Ollivier, cited by de T’Serclaes.

b) **Most others commonly**, who, from a spontaneous affection of mercy, regard such a lot of the workmen as though unworthy. How often are these or other similar things heard: “That wage is too small in the city. How can the workman’s family be supported by it?”

c) **The theologians themselves** who, relying upon St. Paul, First Epistle to the Corinthians 9:14,³ will that even one who applies himself to spiritual works has a right to suitable sustenance and culture. How much less would they deny such a thing to those who directly seek gain! But one must always keep in mind, as we warned, that an adult workman does not obtain *per se* the suitable supports of life unless the wage is familial.

³ “Thus also the Lord ordained that those who preach the Gospel should live by the Gospel.” Here observe that for St. Paul “to live by the Gospel” is equivalent to receiving one’s wage. For the Lord had said, Luke 10:7: “For the laborer is worthy of his wage.”

d) **Indeed, morally all persons.** To this belong sayings such as, “To procure sustenance by labor; *vivre de son travail* [to live by one’s work]; *travail = gagne-pain* [work = a means of earning one’s bread],” by which words labor and sustenance appear joined and coupled. Thus it is explained why, in defining and increasing the stipend of officials, this rationale is perpetually brought forward: such a recompense is required that the official can live according to his condition with his family; the force of this rationale is denied by no one.⁴ And how great would be their grieving murmurings and complaints if honoraria were established for them lower than those by which the means of honorably supporting themselves and their own would be supplied! But we showed from the beginning that the matter of officials and workmen is similar. Nor is anything else demonstrated by the perpetual efforts of all who are accustomed to undertake works or sell things, that from the price they may suitably support their whole household.⁵ What of the fact that the notion of this proposition is so natural and implanted in our minds that there is no one who ever judges an able-bodied workman to ask too much or to act unjustly when he demands such a wage and moves every stone to obtain it? Therefore, without doubt, the demand is just. But see where this beginning tends. **If it is a just demand, it is therefore a demand for a just price. But if the price is just, it is therefore owed.** For what is just except an equal due (no. 17)? Nor should you say that a lower wage is not for that reason pronounced unjust. We judge—and the preceding rationales furnished confirm it—that a lower wage is pronounced objectively unjust or unequal by all who consider the matter with a mind free from prejudices. Moreover, apart from the fact that most explain the latitude of a just price from

the mere discrepancy of probable judgments (no. 340), so that a price which is positively thought just by all is necessarily owed, all certainly acknowledge that the interval between the lowest and highest price, as regards things which are in use, is not great. On the contrary, a vast difference intervenes between a family and an individual wage, since it is formal and affects no small part of the total sum. And already, in those things which will be said to pertain to the rationale of either one, there will be a place for various and probable opinions.

⁴ Thus Taparelli, because the magistrate furnishes labor to the state, binds the latter by the obligation of paying a stipend: a) by which the magistrate may support himself and his own; b) by which cessant gain may be compensated to him. *Saggio*, and so forth, vol. 2, no. 1143. Since he said, vol. 1, no. 428, that a servant furnishes labor to the employer, he would judge in the same manner concerning the wage of workmen.

⁵ Already in the fourteenth century, Henry of Langenstein, *De contractibus* [On Contracts], pt. 1, chap. 12, wishing to indicate the manner in which a “laborer” can *per se* estimate his things justly, has the following: “Let him consider for how much, by selling his things, he can continue his state and nourish himself suitably in it; and according to this, with expenses and labors rationally estimated, let him measure also the price of the works.” In Brants, *Les théories économiques au XIIIe et au XIVe siècle* [Economic Theories in the Thirteenth and Fourteenth Centuries], p. 119.

Let this excellent confirmation be heard from the words of Mr. Charles Périn, speaking of the morals of a Christian state: “Opinion, deeply penetrated by Catholic thought and sentiment, would never have regarded as just a wage which did not procure what is necessary for the father of a family living by his labor.” *Premiers principes*, 2nd ed., p. 307.

Argument 2. From the order of nature or of divine providence.

N.B. By this argument we touch, as it were, a deeper rationale, by which the common estimation itself and the force by which we are borne to judge a family wage just are explained. It is of the following kind.

Among necessary things in which nature is held not to fail, since it rather operates toward abundance, there is certainly found this: that nothing is *per se* disordered or unarranged, and consequently that means *per se* apt and sufficient are prepared for natural ends. **Per se**, I say: for nature regards those things which occur for the most part, so that a defect can occur in the fewer cases. Yet nature is then accustomed to meet this defect itself by extraordinary provision according to the more or less absolute necessity of the contrary good. From these things it is now perceived why, in adapting the wage to the family, we must posit the ordinary necessities by which it is *per se* pressed, and why the force of the argument is not the same as regards extraordinary conditions of affairs.

But: This order of nature demands in many ways the obligation of an absolute family wage.

Therefore: Nature sanctions this obligation by the virtue to which it pertains, that is, commutative justice.

The minor premise is proved. With this obligation removed:

1. The personal independence of men fails, as it is intended by nature. For in order that independence may be full, it is necessary not only that the means strictly necessary for the ultimate end itself be inviolably available to individuals, but also that a free and independent approach to the goods and the state which nature *per se* wills to be common should lie open *per se* to all.⁶ But he to whom, at adult age, a wage suitable for a father of a family is not paid does not have an unimpeded

and independent way to the common state of marriage and the consequent sufficiency of goods, which nature wills to be common just as much as the state itself; but, as regards them, he becomes subject to the good will and mercy of others. Therefore.

⁶ We say common, that is, of most persons, not of all, so that we may signify a lesser necessity than that which is called almost extreme. Cf. nos. 231–232. We borrowed this distinction of goods from Cardinal de Lugo, disp. 16, no. 154, who consequently would plainly subscribe to our reasoning, unless something deceives us.

To this minor premise. For an independent approach signifies either a faculty which is physically present and whose use cannot morally be impeded—thus liberty, the use of things which have not been appropriated, and the very faculty of laboring—or an **inviolable faculty of demanding**, that is, a right strictly so called. The wage-earner who is compelled to seek sustenance by hiring out his labor alone lacks the former faculty in our state, where morally all riches have been appropriated. It remains, therefore, that a right belongs to him. But this, since we are not treating a case of extreme necessity, will be none other than that which arises from the value of the labor. Therefore, lest personal independence perish in part, it is necessary that at least a family recompense correspond *per se* to the value of human labor.

2. The efficacious destination of temporal goods to the common use of men fails. For this destination, in order that it may be efficacious, demands: **a)** That the earth bring forth for men laboring such an abundance of fruits as is *per se* sufficient for supporting all decently; **b)** that no other appropriation of things be held valid except that by which the faculty of sufficiently providing for themselves from these goods is given *per se* to all.

But: This demand is met only by the fact that, for paying a family wage to adults, **a)** the means are available *per se*, and **b)** there is an obligation of justice in the employers of labor.

Therefore: The efficacious destination of temporal goods to common use fails unless a family wage is to be paid *per se* from justice.

To the major premise. a) What suitability between the means and the end would there otherwise be? Nor should you object original sin. For, as theologians say, it left nature intact in substantial things, so that this sin cannot be demonstrated by reason, but by revelation alone. And from revelation itself we have, indeed, the punishment of hard labor imposed as a condition, but not that the sufficiency of fruits was taken away. On the contrary, Genesis 9:1–3 relates the blessing imparted to the generation of Noah—and therefore after sin—by which men are commanded to increase, multiply, and feed upon animals as well as the fruits of the earth.⁷

⁷ Here there can be a certain negative use of the words of Genesis to which appeal is made in the encyclical itself: “In the sweat of your face you shall eat bread,” insofar as, in pronouncing the punishment, God did not withdraw bread but merely made the way of obtaining it harsher. Rev. Fr. Castelein, *Institutiones philosophicae* [Philosophical Institutions], p. 374, not without reason disproves and censures the excessively positive use of this passage which several writers, for example Liberatore, seem to make.

b) For we saw above, no. 232, that the common destination of goods is not taken away, but rather sanctioned by the division of possessions, as by a more suitable means. But that destination would not be sanctioned if the force of the division would *per se* come down to this: that it deprived very many of an unimpeded faculty of providing sufficiently for themselves from these goods.⁸

⁸ We are always treating a free state. The state of servitude itself is had *per accidens*. Cf. the scholium, no. 451.

To the minor premise. a) For because the common condition of adults, with nature persuading, is that they be fathers of families, a suitable abundance of things is not *per se* available to all unless it corresponds to the common necessities of a father of a family. b) Unless there inheres in the employers of labor an obligation from justice to pay a family wage, most men—I mean those who seek sustenance by labor—have no means *per se* of providing sufficiently for themselves. For the office of charity by which the rich man is bound, and which is joined to an abundance of goods, indeed places in the rich man the faculty of giving and the will, if he observes honorable conduct; but it places in the poor man no faculty either of taking or of demanding, and consequently no means. For a means is that which you have an unimpeded power of using.

3. The powers and faculties of an adult man *per se* fail. *Per se*, the powers and faculties of an adult man are directed to providing not only those things which are necessary for himself, but also the greatest part of those which the family needs. Cf. no. 438, point 3. Nor are children *per se* committed to the care of any others than their parents. Therefore, just as food consumed by adults is destined in part, but in sufficient quantity, to offspring to be generated; just as breasts full of milk are prepared for a mother for the offspring born; so it is necessary that, in a state in which a great part of adults has almost only its industry in place of wealth, the powers of adults be endowed *per se* with this fruitfulness by which they are able to suffice for themselves and, for the greatest part, for their household. This fruitfulness, after the manner of a certain cessant gain, must be compensated by a wage which, consequently, in order to be just, must at least be familial. Whoever denies this is at the same time compelled to acknowledge that the powers of an adult man are poorly adapted to the end.⁹ Therefore, even if we wished to estimate every labor from economic fruitfulness, we would nevertheless not depart from our opinion as though defeated in any respect. Cf. the same argument in A. Verhaegen, work cited, no. III, who also cites Taparelli; or in Charles Périn, work cited, 2nd ed., p. 413; or Liberatore, no. 89.

⁹ “Labor, therefore, is virtually for the workman that which is necessary for his own maintenance and that of his little family. If, therefore, he employs it for the employer, it is necessary that the employer recompense him with the equivalent, so as thus to preserve ... justice.” Thus Liberatore, work cited, no. 89.

4. The common good is not sufficiently safeguarded. That a family recompense is supremely expedient for the common good, indeed that it is almost necessary, is scarcely doubted. And Rev. Fr. Antoine, *Cours d'économie sociale*, 2nd ed., p. 606, sets this forth excellently above the rest. Therefore, we shall say that wise nature, which directed rights themselves to the common good, so disposed affairs that human labor is *per se* worthy of that recompense which the rationale of the common good demands. Nor should they appeal to legal justice, which is nothing unless it says confusedly in the case the same thing which we expressly contend. And besides, how astonishing and how little probable it would be if it must be acknowledged that the common good requires that human labor be recompensed too much, that is, beyond its true value! Recall also the things said above (no. 429) concerning the similar example of grave matter of theft. Nor should you say that the common good requires this alone: that the necessities of families be amply met *per se*, and that this is done through a **collective wage**. For this, since it varies according to the varied necessities as they actually are, cannot, as we warned in no. 438, be owed from commutative justice. But with this obligation excluded, all the disadvantages return by which those are refuted who derive the obligation of a family wage from charity, from equity, and from legal justice.

Argument 3, or various confirmations.

1. Economists, when they inquire concerning economic requirements, establish as the norm or rule of the minimum wage that wage by which adults can provide not only for themselves but also for some children.¹⁰ Are not these things an indication to us that this wage is *per se* just, so that all things may suitably cohere with one another in the state?

¹⁰ Cf. the accurate analysis of this wage in Cauwès, vol. 3, nos. 805–814, where note these statements: “The rational economic unit from the standpoint of income is the family” (no. 813); “The normal wage, such as it has just been analyzed, is, when the economic interests of society are considered, a minimum of recompense” (no. 814). Cf. also Charles Périn, *Premiers principes*, 1st ed., pp. 295–296.

2. We showed above, nos. 429 and 437, point 2, that those who contend that the family wage is presently owed from legal justice tacitly subscribe to us.

3. Unless you concede our thesis, but place the lower limit of the just wage in a recompense suitable for an individual man, you at the same time acknowledge that provision has not been made *per se* for the necessities of children who belong to the most frequent order of proletarians, and that they themselves are pressed by misery and need not merely *per accidens*.¹¹

¹¹ “If labor were to provide only for the personal needs of the worker, who then would be charged by natural right with furnishing what is necessary to those who cannot work?” Gayraud, *Questions du jour*, p. 170.

4. The argument of the Encyclical fits our case perfectly. For in the office imposed by nature of preserving life, it finds the rationale for taking as the lower limit of the just wage that wage which is not unequal to supporting the workman. Since the conjugal state is intended *per se* by nature as common, the consequent office of supporting offspring grounds an altogether similar argument.

5. Let this confirmation from the Rev. Mr. Marrès, the distinguished professor of Roermond, writing even before the Encyclical, bk. 4, no. 353, be heard: “That stipend appears to be just by which the one who hires out his labor can provide for himself and his own according to his condition; for the dignity of human nature and the right order of society, and therefore also natural right, demand that each person be able by laboring to provide for his own sustenance.”

6. We are confirmed by Rev. Fr. Castelein. For he: a) on p. 381, § 5, holds that, in the “normal” state of affairs, the wage to be paid from commutative justice extends to procuring the decency of its state for the working class. No one will fail to see how near this opinion is to ours; and it logically comes down to our opinion if you observe, as we said (no. 438), that justice has a mean of the thing, so that this justice cannot furnish this decency except by awarding to each able-bodied workman an absolute family wage. b) On p. 388 he argues thus: “Divine providence must have willed that the workman, as a man, be able to acquire by his own power not only the necessities of life but an honorable, free, and secure condition of living.... But in the state of society in which immovable goods and the instruments of labor have already been preoccupied by legitimate possessors, the workman cannot procure such a condition for himself except by means of a collective family wage.... Therefore....” Here you see that the distinguished writer reasons elegantly and erred only in the word **collective**, in place of which it is readily evident that **absolute** must be put.

7. Finally, we shall place, as it were, the summit upon our work with this argument of the Most Illustrious Mr. Waffelaert, by which, in the study so often praised, he vigorously comprehends these same things: “The employer owes the workman the just wage, the equivalent of the labor furnished;

it is the workman who, with the wage, must provide for his subsistence; this subsistence must be understood as the subsistence of an honorable workman who is a father of a family. Whence it follows that, in the normal state of society and apart from a passing crisis of industry, the wage must be sufficient for the workman to be able to fulfill the obligation proper to the head of a family. Therefore, in these normal conditions, the employer is unjust if he gives less.”

N.B. 1. We can therefore say: whether we argue from common estimation, or from the innate fruitfulness of labor, or from the common good, from these starting points alike we are led to the limit of an absolute family wage.

2. It does not help here to appeal to charity or equity. Lest there appear to be some cause for doubt on account of the exception which some attempt to seek from rationales of equity or charity, it is useful to show briefly how futile this exception is, since both the offices of equity and charity, if there are any, cannot be regarded as means which nature uses *per se* to provide for some common and ordinary necessity. For:

a) Both regard cases which occur *per accidens*. Equity fittingly tempers, in particular cases, the excessive rigor of strict right. Cf. the following thesis and Lehmkuhl, vol. 1, no. 776.

The office of charity which is treated here regards misery. But misery cannot be a condition intended *per se* by nature for some class of men. This is repugnant to the common good. Cf. Nicotra, work cited, p. 25; Charles Périn, work cited, 2nd ed., appendix, p. 413; Gayraud, pp. 170–171.

b) Charity confers no right upon the needy person. Therefore, in the hypothesis of the adversaries, most families, as regards decent sustenance, would *per se* be subject to (*dépendraient de* [would depend upon]) the good will of others.

Nor should you object by the rationale by which God provided for the propagation of the Gospel (Rev. Fr. Castelein, p. 374, note). Several things would have to be observed. This one thing will suffice: we are warned more than once by St. Thomas that the supernatural economy cannot be compared with the natural. Cf., for example, his reply to objection 3, art. 7, q. 23, First Part of the *Summa*.

440. III. Difficulties.

N.B. Concerning the consequences objected. After the not inconsiderable things which we have discussed concerning the cause and the very rationale of arguing, the confirmations of the adversaries appear to be dissolved without difficulty. Indeed, there are several which do not touch us in any way and which we shall recount here briefly, both lest they appear to have escaped us and because they provide an occasion for saying what may perhaps be pleasing or useful to someone. There are, however, certain consequences through fear of which the minds of some are held back from embracing a cause to which, on account of their good will toward the less fortunate, they cannot be hostile.

Therefore, the following are by no means connected with our conclusion and arguments:

1. The right to labor, I mean that spurious and adulterine right which must plainly be rejected. For the faculty of profitably applying one’s labor is no less inviolable than the right of cultivating one’s own field and selling its fruits. But just as there is joined to this right no office of justice by which others are bound to buy, so there is in others no obligation of justice to hire anyone’s labor; nor can

anyone, unless an agreement has been made, demand that another furnish him the opportunity of exercising his powers.

Come now: it is manifest that our reasoning by no means leads us to vindicate that false species of right, because from the natural office we gathered this one thing alone: that provident nature has prepared *per se* suitable means which are either a faculty of acting or a faculty of demanding. We say that the right to labor pertains to the former kind: namely, that affairs have been so disposed by nature that an abundance of useful and profitable labor is not lacking *per se* to a skilled and industrious man. Indeed, we made use of the support of this rationale in the third confirmation of the second argument.

At the same time, we do not deny that it can happen *per accidens* that there are too many who for a time lack an opportunity of working; the civil authority will then have the right and office of meeting this evil by suitable remedies, to the extent required. Yet by suitable remedies, which, rather than itself hiring the labor of idle persons uselessly, will generally have to be placed in these things: a) That knowledge be spread of the places, persons, and businesses in which labor is sought, and that the institutions which are called in French *Bourses du travail* [labor exchanges] therefore be fostered; b) that access to those places be made easier;¹² c) that an easy opportunity be available to all of acquiring that skill which never fails to render labor valuable. This is the utility of schools in which young persons are trained in various trades (*Écoles industrielles, professionnelles* [industrial and vocational schools]).¹³

¹² To this belong *les trains ouvriers, abonnements à prix réduit* [workmen's trains and reduced-price season tickets]; yet these devices do not lack their drawbacks *per accidens*. For through them it happens that happier regions are infected by contagion from places where faith or morals have been corrupted. It will pertain especially to active charity to diminish or alleviate these evils.

¹³ What is the rationale and utility of these institutions, and what has laudably been done or attempted among us in this matter, you may see in our *Manuel social*, pp. 382 ff. (2nd ed.).

2. A relative family wage. For we did not immediately direct some just rationale of the wage to necessities, but in the necessity which is generally present we saw an indication of the value which inheres *per se* in every human labor from nature.

3. An unequal wage by which the labor of a bachelor and of a father of a family is recompensed. Cf. what was said in no. 438.

Come now: a few contrary rationales remain to be dissolved in form.

1. NO LOWER LIMIT IS TO BE ESTABLISHED

I am not bound to buy labor except for as much as it is worth to me. Therefore, if it is worth less to me than the limit which you wish to assign, why must I regard this limit?

Reply. I distinguish the major. I am not bound to buy it except for as much as it is worth to you according to the proximate rule of value, or the agreement, without regard for the higher law concerning the equality to be preserved (cf. Thesis XXV), **I deny the antecedent**; except for as much as it is worth to you according to an agreement not repugnant to the higher rule, **I concede. I distinguish the consequence likewise.** If the wage is worth less to you according to the proximate rule without regard for the higher one, there is no reason why you should assign the quantity

established, **I deny**. If it is worth less to you with the higher rule considered, **I deny the supposition** that this can occur *per se*. *Per accidens*, however, we concede an exception.

Here, as always, in place of an arbitrary estimation, we require a true estimation, which we showed against the liberals in Thesis XXV to be objectively available; and we deny that the same estimation is sufficiently gathered from the faculty of hiring at a lower price others who, pressed by some necessity or unwilling, are prepared to accept any conditions whatsoever.

2. THE LIMIT CANNOT BE GATHERED FROM THE NECESSITY OF THE WORKMAN

a) The just wage is to be elicited not from the need of the workman but from the value of the labor. But the argument rests upon that need as the means of demonstration. Therefore, it does not establish that this wage is owed from commutative justice.

Reply. I distinguish the major. The just wage is not to be elicited from the need of the workman immediately or formally, **I concede**; mediately and materially, insofar as we show that the value of labor remotely depends upon the (common) need of the workman, and that quantity is demanded *per se* as the minimum which is just, **I deny**. To the minor: The argument rests upon that need. **I distinguish**. All the arguments do so, **I deny**; one of those adduced does so, **I subdistinguish**: immediately or formally, **I deny**; mediately or materially, **I concede**.

We do not argue formally from need; otherwise, the just quantity would vary according to various necessities, whereas we reject the relative wage and establish an absolutely minimum quantity. Therefore, neither do we argue immediately from that necessity. But the common necessity indicates to us that provision has been made by nature for some suitable means; and since we find that this is nothing other than such a stipend as is *per se* suitable for a father of a family, we rightly establish this limit below which, at the command of nature, human labor cannot become cheap.

b) By arguing from the office of preserving oneself and one's own by means of labor, you tacitly introduce a right to labor itself.

Reply. If you argue immediately from the office, **I pass over**; if mediately, as we have done, **I deny**. Cf. the things said just now here in the N.B.

3. AT LEAST THE LIMIT CANNOT BE PLACED IN A FAMILY WAGE

a) That regard must be had for the workman's family appears absurd and, moreover, such as would move employers to hire bachelors instead.

Reply. I distinguish the assertion. In a relative family wage, **I concede**; in an absolute one such as we have described, **I deny**. I concede the rationale added; but I deny that regard is had by us for the family, since we establish the same rationale for all.

Instance. But if one spoke consistently, the same wage should not be established, but one for one family and another for another.

Reply. I distinguish the minor subsumed. If one argued immediately from the necessity of the family,

I concede; if from the value of labor demonstrated through its common destination, **I deny**.

Instance. Nature, which is said not to fail in necessary things, ought no less to have provided for the extraordinary cases of an invalid workman or of an unusual number of children, for which, nevertheless, as is conceded, it destined labor unequal to caring for them. Therefore, the argument inconsistently stops at ordinary circumstances.

Reply. I distinguish the antecedent. It ought to have provided in the same manner and through the same means, **I deny**; in another manner and through supplementary means, which we do not doubt must, to the extent needed,¹⁴ be placed in equity and charity, **I concede**.

¹⁴ We add this because, in order to meet an unusual necessity, it will not rarely suffice for you to live somewhat more sparingly for a time. Thus, for example, a father of a family earning the stipend which we say is *per se* suitable for an ordinary family will, without too much difficulty, also have at hand the means of supporting two or three children who exceed the number of an ordinary household. Moreover, let us always be mindful that the just wage is not necessarily equaled by this lower limit of the wage.

It is a perpetual principle that it is not repugnant to the natural order for the customary means to fail *per accidens*. These are then customarily supplied to some extent in another way, although not rarely less perfectly. Thus reason is given as the guide of an adult man. It fails *per accidens* in an insane person. Provision is made through the extraordinary remedy of another's charity. Cf. Gayraud, pp. 175–176.

b) Labors are personal to the workman. Therefore, the recompense ought not to be familial (behold the Achilles of the adversaries).

Reply. I distinguish the antecedent. They are personal from the efficient and moral cause, **I concede**. From the destination which they have *per se*, **I subdistinguish**. From the primary and principal destination, **I concede**; from the adequate destination, **I deny**. That is: insofar as they are from the workman and belong to the workman, **I concede**; insofar as they are directed to the workman alone, **I deny**. **I distinguish the consequence likewise.** The recompense ought not to be familial, insofar as it is neither owed to the family nor to be accommodated to the family actually possessed, **I concede**; insofar as a wage which is *per se* suitable for a father of a family is not owed to the workman himself, **I deny**. Cf. Gayraud, p. 175.

Thus the eating of food is personal and proper to the one eating; and yet it not only restores the powers of the adult but supplies the powers of generation and furnishes milk to the mother for nourishing her little children.

N.B. Observe that by this rationale only those can be affected who see in the wage nothing but the virtual restoration of the powers hired out. We warned above, no. 429, that they are deceived by a false appearance.

c) The obligation of supporting a family is freely assumed by entering marriage; not so the office of preserving life. De Gryse, p. 48.

Reply. At most, this difficulty suggests that there is not a complete parity between the two; and that the obligation of a wage suitable for a father of a family cannot immediately be inferred from the obligation of paying sustenance to the workman himself. But more directly:

I distinguish the antecedent. It is freely assumed by entering a state which is intended by nature as common, **I concede**; it is freely assumed without a connection with a state of this kind, almost as

you freely contract a debt (the comparison which the Rev. Dr. De Gryse uses, place cited), **I deny**.

Now, we by no means argue from an office of marrying, but from the fact that this state is common and the consequent necessity is imposed *per se* upon most men.

d) A vicious circle is committed in the argument made, when it wills that the wage be required according to the manner of a decent life. For this manner depends upon the wage itself as upon its measure. Therefore, it cannot be made the measure of the just wage.—They confirm this antecedent thus. What things pertain to decent sustenance and culture is defined differently at one time and in one region than at another; and the price of labor itself has very great force in this matter. For it is necessary to accommodate expenditures to income, whereby it comes about that the abundance of things available governs the pursuits and desires themselves.

Reply. I deny the assertion. And to the rationale submitted, **I distinguish the antecedent.** The present manner of decent sustenance depends upon the wage as upon its adequate measure, **I deny**; as upon an inadequate measure, **I subdistinguish**: upon the present wage, **I deny**; upon a wage whose use has been sufficiently universal and sufficiently long-lasting, **I pass over**, at least if it be conceded that its influence is slight rather than principal. **I distinguish the consequence likewise.** Therefore, it cannot be an adequate norm of the just wage, **I concede**; an inadequate norm, **I subdistinguish**: of the wage to be paid at present, **I deny**; of the wage of a preceding time, or of a subsequent and later time, **I concede or pass over**.

Observe that we estimate by the decent sustenance of a father of a family not so much the just wage as its lower limit. We do not deny that this notion varies according to circumstances. We explain this as follows.

The increasing culture and prosperity of the civil community make the use of many things which were previously possessed by few more common, so that some things can be regarded as luxuries in one age which in another are judged to pertain to necessary sustenance. For custom, as though a second nature, produces necessities. Moreover, the place which the various conditions of men hold in the common estimation has no small force for defining what supports of life, according to the common abundance of things, appear necessary or decent for each order of citizens. We can all the more readily pass over the fact that the incomes of individuals themselves are not without influence upon the formation of customs, because we judge that there will scarcely ever be a long-lasting disagreement between the agreements which are customarily made and those which are commonly judged ought to be made.

Culture and prosperity must be posited as progressing *per se*. For this appears to be the intention of Providence even in this visible world.

If, however, prosperity recedes *per accidens* in some region, we shall not deny that the same causes then operate in the contrary manner. It will be necessary, gradually and imperceptibly, to abstain from several things whose enjoyment was formerly sufficiently common; and after some interval of painful and troubling privation, fewer things will then be judged morally to pertain to the decent sustenance of some order.

Briefly, therefore, we shall say this. From the manner of living which is congruent with general prosperity and one's proper dignity, the decent sustenance of each person—the *standard of life*, as they

say—is defined, and therefore also the present lower limit of the wage. The wage can contribute something to that manner, not indeed the one which is actually paid, but the one which has become sufficiently established. If the present wage had to be judged adequately from the present manner, and this in turn depended entirely upon the present wage, the difficulty raised would offer some appearance of force; but now, since from the present manner we estimate only the lower limit of the present wage, and this limit is in no way subject to the present wage but only in part to the wage of a former age, where can even a blemish or shadow of that fault be detected?

Instance. By the very fact that decent sustenance varies, it cannot be the measure of what is just.

Reply. I deny. For it varies not formally but only materially, or as regards the things which it contains in various regions or times. Besides, what measure can be proposed which is more certain and stable? Necessities? Their rationale also varies and is placed in large part in moral consideration.

Price? How mobile and inconstant it is cannot be unknown even to those who are most unskilled in economic sciences.

Instance. But this rationale: a) also varies comparatively, that is, for different workmen; b) comprehends several grades, so that it is not definite.

Reply to a). Insofar as there are several grades within the very order of those who are hired, I **concede.** Indeed, we freely admit this, since we ascribe the honoraria of magistrates and the stipends of workmen to the same genus. Insofar as it cannot be morally estimated which are of the same condition, which of a disparate condition, and what pertains to decent sustenance for each grade, I **deny.**

This is no more difficult than establishing various prices in any other manner, but far easier than comparing with one another the merits of dissimilar labors which have been usefully furnished.

To b). We define the limit not by just any grade but by the lowest, therefore by that grade whose removal is followed by misery.

Besides, is not the use of this norm constant in theological discipline and jurisprudence? How often does it happen that judges thus estimate the sustenance owed to parents and children, and casuists what can be retained by a debtor who is insolvent!

4. FROM AUTHORITY

Cardinal de Lugo, vol. 2, disp. 29, no. 62, following Molina, vol. 2, disp. 506, warns that it is not always unjust “for a wage not to suffice for the decent food and clothing of a servant,” and much less, as Molina observes, place cited, no. 2, if it is unequal only “to supporting his children or family.” Indeed, in no. 4 Molina is content with the stipend which, “with consideration given to the abundance or scarcity of those who are found at that time to serve in such a manner,” is customarily paid in that region.

Reply. They are treating servants who, as they immediately add in confirmation of the things said, can “at the same time attend to other things by which they can supply what is lacking for food and clothing and provide for themselves,” or who at the same time are taught an art useful to them afterward and derive compensation therefrom.

In a similar manner you will explain what Cardinal de Lugo has in no. 63.—As regards Molina, consider the rationales by which in no. 3 he explains why several are content with a lower stipend. Observe, moreover, that he has before his eyes domestic servants, who often obtain an accession to the price from other advantages. And in an age in which principles and judgments were less corrupted, he could more readily trust the customary determination of a region than now, when the causes which he himself indicates in no. 4 as inducing a less just wage so frequently have place: errors, coercion, necessity.

Finally, from the Roman response itself, what Molina has in no. 3—that a hirer can establish the stipend for which others willingly offer their labor—is to be accepted with a grain of salt. It is true, provided that the wage is just as regards them and, moreover, that there is at hand an opportunity of hiring others who are not inferior in excellence to those whom you actually hire.

§ 4. Supplements to the Doctrine

I. COROLLARIES

441. Care for a suitable wage must be reckoned among the primary offices of employers or masters of the enterprise, who ought to endeavor to sell their wares at that price by which they may at least be able to pay a family wage. It is no more lawful for them than for contractors to make gain, directly or indirectly, out of the workmen's wage.

Moreover, not only those who administer affairs but especially those in whose name the business is conducted are bound to this office according to their powers. For to these are to be transferred the things which in moral discipline are established as to be performed by principals. They do not indeed participate from justice in the proper fault of the agent unless they have efficaciously ratified it or the advantages and profits of the fault have come to them. But they are bound so to entrust the mandate that the agent is placed in no proximate occasion or certain moral necessity of acting unjustly, but has a free choice of fulfilling the parts of an honorable employer, and understands that in this manner the administration has been entrusted to him. For it happens that the managers themselves grieve because they are unable to do several things which it is most important for them to perform.

If this office had been sufficiently observed both by employers and by “shareholders,” how many sins and iniquities would have been avoided which have furnished no slight occasion for the present dangers!

Therefore, because an uncertain will and execution are accustomed to proceed from uncertain principles, it is of such great importance that good men agree concerning this question. We have already warned that this is not difficult, provided that they are willing to consult Christian sense and to avoid the specious rationales or snares of liberalism.

For the cause which we have discussed at sufficient length—the limits of the lower just price—is rightly referred by Mr. Charles Périn for judgment to the common sense of Christians itself. Cf. the argument in the place cited.

We think that the study of the Most Illustrious Bishop of Bruges will bring no slight assistance toward this most desirable agreement.

442. That cause of the limit of the just wage, which at first sight appeared proper to the lowest order, in reality pertains to all. For it is necessary that each person obtain his own according to his condition from the suitable labor which he has hired out: namely, a competent wage, at least the decent supports of life, increased by those things which, from common estimation, complete the just price.¹ This was already taught by Taparelli, *Saggio teoretico*, and so forth, no. 1143 ff. Cf. also Cauwès, no. 811. Moreover, it is manifest that the things to be attributed under this title vary materially.

¹ The other argument, however, which we used in the proof does not seem to have force for those who exercise the nobler arts.

443. That you undertake a business at the persuasion of charity by no means excuses *per se* the stipulation of a wage lower than is equal. And this case must be carefully distinguished from another in which, from charity, you desire to number among your servants someone whose labor you do not need at all. For in the former, that motive of charity is extrinsic to the business itself and affects none of its fruits, so that a true exchange of labors takes place which is by no means released from the laws of justice. In the latter, by contrast, the workman brings you a diminished, or even no, utility of his powers; with this rationale diminished, you can estimate his labor just as you would do if you hired a workman inferior in strength or skill.

444. A more explicit account of the family wage.

1. As regards the persons to whom it is attributed. Lest we introduce confusion by novelty of expression, we proposed the conclusion in such a manner that the labor of one adult and able-bodied workman appeared to be recompensed by a family wage. If, however, the sufficiency of a wage which is familial is estimated without omitting the fruit of ordinary thrift or neglecting the moderate assistance of children and wife, it is sufficiently apparent that this account also fits the wage by which the labors of young persons and women are exchanged. It is necessary that these persons be able, from their labors hired out—in the proportion which is equal and to the extent which their very condition permits—to contribute toward supporting the family that assistance by which the father of a family rightly expects his burdens to be lightened. In this manner, although perhaps several do not even earn sustenance for themselves alone, all will receive a truly family wage.²

² Here you see a furnishing of labor which is not compensated by sustenance, and rightly and deservedly so, so that there appears again the vanity of the rationale drawn from the necessary equalization between the powers granted and sustenance. Cf. above, no. 429.

2. As regards the things contained. For it is useful to define more fully the things contained in the general formula of the decent sustenance of the workman and the family.

Come now: if we attend to the offices and cares with which a man is *per se* occupied in his life, it will readily be proved, unless something escapes us, that it pertains to decent sustenance that a thrifty and honorable workman, employing wise thrift and enjoying the customary assistance of the family:

a) Be able *per se* to provide for himself and his own moderate food according to their condition,³ clothing, and shelter;

³ To this pertains that children be nursed by their own mother. It is known that, more readily than accords with the desire of nature, other women's breasts are sought for the infants of a wealthier family. From this it happens not so rarely either that a reward is given to daughters who have fornicated, or that an honorable woman is withdrawn from her own children and her husband. These evils then threaten: that the woman becomes averse to labor, disdains the

foods of her condition, that the man gives himself to incontinence and intemperance, and that the whole household is disturbed.

- b) Be able to observe feast days and indulge in some recreation;
- c) Be able to provide for the suitable education of the children;
- d) Be able to meet the customary cases of illness and various dangers;
- e) Be able to prepare for himself an old age that is not impoverished.

What ought to be at hand for these latter two necessities will be taught by the customs of the region themselves and by the devices which have been invented whereby, with the uncertain burden and danger divided among many, the loss of those whom disaster has actually affected is repaired at less expense. Therefore, if custom has it that elderly persons are received as guests by one of their sons, it will be necessary that the infirm person be able, from his former labors, to supply those things by which the son is capable of bearing this burden. Today, in our regions, it will suffice if, while he has strength, he can contribute this money by which he may pay the price of “insurance” against illness, infirmity, and probable misfortunes.

These are approximately the things which appear to us to be contained in the absolute family wage. If you remove one of them, you must at the same time confess that, with nature as author, a great part of the human race is *per se* situated in a state of misery. Moreover, our exposition is confirmed by Mr. A. Verhaegen, work cited, p. 59; by Rev. Mr. Gayraud, work cited, pp. 177–178; and by Rev. Fr. Martin, writing thus in the periodical *Études Religieuses*: “Since the existence of a man and his family is at issue, the wage is, for the workman, housing, food, clothing, tools, school for the children, and, in addition, savings for bad days, unemployment, or illness” (*Études Religieuses*, 1892, vol. 55 bis, p. 214).

II. SCHOLIA

445. Why is the customary, or not excessive, number of children regarded rather than the average? We said that circumstances which are not extraordinary are to be chosen rather than average circumstances (against Liberatore and several others), because there is no average family, nor is nature accustomed to adapt things to the figments of our mind, but to those things which occur for the most part, and by abounding rather than by failing. Nor does common estimation, whose authority is so great in our argument, rest upon these rationales. For the account of the average family is known to few, while, by contrast, all distinguish the ordinary circumstances of families from the extraordinary.

Moreover, to calculate some average is useful only when that which is excessive and that which is too little are in reality compensated to one and the same person. Thus, if 10, 20, and 30 are to be received at a short interval, it will make almost no difference to you to obtain them as described or to acquire 20 three times in equal portions. But when different things fall to different subjects, so that what falls to one pertains in no way to another, it can happen that the average account is suitable to no one. Thus, if two persons are to be clothed, one a giant and the other a dwarf, an average garment will fit the body of neither. Likewise, in our matter, it will profit nothing for the family whose burdens exceed the average that there are other families for whom average sustenance is superabundant.

It is useful, finally, to illustrate by an example what the difference is between the two estimations. Let there be fifteen families which are distributed according to the number of children in such a way that one lacks offspring; two have each begotten one child; two, two children each; three, three each; four, four each; two, six each; and one, ten. Among us an offspring of five or six will not yet be called extraordinary; according to our opinion, therefore, a family wage can be demanded up to this number. The average account, however, or $\$53/15 = 3\frac{8}{15}\$$, would be only approximately four. Yet we warn that the difference is not enormous, since the annual expenditure of a household of slender means does not vary greatly on account of one or two children.

446. Relation of stipends to suitable sustenance. Nothing prevents certain stipends from exceeding, even greatly, the suitable sustenance of a father of a family. Yet these two things appear to demonstrate that generally the excess will not be lasting:

a) That from the abundance itself a custom of more ample culture will be contracted, by which custom the account of decent sustenance will now extend to more things; b) that, enticed by the desire for this richer stipend, more persons will begin to contend for obtaining these offices, whereby the price will be depressed.

Thus, moreover, the general law by which, with monopoly excluded, the prices of things are said to be equalized *per se* to suitable sustenance or customary expenditures is merely transferred by us to this case.

Therefore, the **iron law of wages** is false if, in establishing it, you contend that there are none from the order of workmen who can become rich and pass into another, higher order; or that decent sustenance is perpetually contained in approximately the same things, when, on the contrary, additions are constantly made to it. But if you merely contend that neither generally nor for a long time do stipends greatly exceed those things which are judged to pertain to decent sustenance, as it is variously defined for various times, you say what appears true, but which at the same time has nothing on account of which we should abhor the economic order.

447. From what causes it is lawful to pay a wage which is not familial. These causes arise:

a) **From the person of the workman**, both from his quality, as if he is less capable; then from his illnesses or burdens, the account of which is unusual; then from his will, as if, pressed by no necessity, he willingly offers his labors at a lower price.

b) **From connected advantages** which, tacitly promised, compensate for the defect. The more ample sustenance of domestic servants appears to us to pertain here.

c) **From an unstable state of affairs** (*temps de crise* [time of crisis]), which generally at least excuses the employers.

d) **From the very condition of the particular business** for which the labors are hired, provided that the difficulties do not lie in the will of the employer.

448. You will ask whether you are therefore excused from paying a family wage because there are others who give sufficiently voluntary consent to a lower wage.

Reply. If there truly are others at hand for you who are judged unwilling in no respect, because, for example, on account of the more frugal life which they profess or assistance which they have from

elsewhere, they can suffice for themselves, you cannot be condemned for injury if you pay anyone this wage with which those others would have been content and for which they would actually have hired out their labors. Thus Molina already replied, disp. 506, no. 3.

To this pertain the complaints by which artisans of slender condition are accustomed to lament the competition of persons who lead a common life in religious houses, or of those who are detained in prison. Although these complaints are accustomed to exceed moderation, they are nevertheless worthy of consideration. For it can happen that even very religious persons, who merit so well of the human race, thus indirectly bring loss upon the family affairs of many by offering their labors at too low a price. This would be no less foreign to their most humane counsels than odious and harmful to the cause of religious congregations. Therefore, if our opinion is of any value, the competent authority will opportunely take care that either they exercise only those labors which cannot incur such ill will, or, unless charity counsels otherwise in a particular case, they demand the just price of the labor. Something similar is already established not rarely by Ordinaries concerning stipends for Masses.

449. You will ask what right applies when affairs are generally languishing in some region, so that the wage is justly depressed there below the limit, but one factory flourishes. Will its employer be bound from commutative justice to pay a wage not lower than the limit demonstrated?

Reply. This case appears capable of being disputed, so that someone may have deemed it sufficient if one pays the just price in that region. This would certainly have to be said concerning the price of any other thing.

Nevertheless, with Rev. Dr. De Gryse, work cited, pp. 41 and 60, we think the response must be that every master is bound from justice by the office of paying a wage not lower than the limit as soon as the condition of his own business permits it, even if a particular cause is present.

The rationale of this is that, as is established from the arguments, that value belongs of itself to human labor and not only from its profitable use, or common fruitfulness. Cf. the N.B. after the proof, p. 583. Nor is common estimation founded upon this fruitfulness. Therefore, even in an unstable state of affairs, although most are excused by necessity, common estimation nevertheless, rightly considered, will not establish the just price of labors below the limit. Even then the request for a family wage will be thought just. The argument made retains its force. But the just price must be paid by all who can pay it, from commutative justice.

And here it appears what difference there is between wares and human labors.

450. You will ask whether labors which are customarily committed to persons not joined in marriage are to be excepted from those to which the limit of the family wage applies.

Reply. Several say so, for example, Taparelli, no. 1143; Rev. Dr. Pottier, diss. 3, no. 221. It appears to us that a distinction must be employed.

If a kind of nonprofitable labor is at issue, and it is truly established in custom that such labors are committed to persons free from marriage, we judge that nothing prevents common estimation from establishing as the just limit of labors of this kind nothing but the proper sustenance of the workman hired.

But if the labors are expended fruitfully, and they are of that kind which *per se* demands the powers and prudence of an adult, the very fruitfulness which inheres *per se* in the labors must be compensated by the wage. Since this *per se* does not remain below the sustenance of a father of a family, it appears that the limit of the just price is in no way changed because those who give themselves to these labors are accustomed to abstain from marriage.

451. You will ask how servitude, by which human labors are made of no value, is not strictly repugnant to nature, which forbids that they be valued lower than a family wage.

Reply. A slave is not hired, and, on account of a particular cause, he does not have his own labors proper to himself which he may exchange for a price. Yet nature did not neglect to provide for him. For from the fact that a slave is adopted into the family of the master, the latter is compelled by piety—which is a virtue more excellent than justice itself—to provide the slave and his children and wife with suitable sustenance.

452. You will ask what right applies concerning the collective wage.

Reply. If you first maintain the rigorous debt of a just wage whose lower limit is *per se* suitable for a father of a family, we entirely approve the humanity and equity of the master of a business by which he assists the particular necessities of the workmen with various subsidies. Since this pertains to the common good, let the public authority itself not omit opportunely to foster it.

But we have already warned above, no. 438, why that account, which is variable and is not defined except from the state of individual families, cannot be imposed by commutative justice. Cf. Périn, *Premiers principes*, 2nd ed., p. 395.

453. You will ask by whom the determination of the stipend to be paid is more fittingly made.

Reply. 1. Although *per se* the legitimate determination of wages is no more foreign to the province of the public power than that of provisions,⁴ it is sufficiently agreed among writers that it is by no means expedient. For they judge a suitable wage to depend upon circumstances too varied for it to be well defined by law. This is confirmed by the unambiguous words of the Encyclical *Rerum novarum*.⁵

⁴ Thus Biederlack, *Die Sociale Frage*, no. 99.

⁵ “Nevertheless, in these and similar cases ... lest the magistrate interpose himself too officiously ... it will be better to reserve these matters to the judgment of the associations of which we shall speak below, or to enter upon another path by which the interests of wage-earners may, as is equal, be safe.” We warn of one thing here. Because the Holy Pontiff at the same time enumerates certain other matters in which he fears the inopportune intervention of the public power, it in no way follows that he makes all of them positively equal among themselves, nor that he wills the magistrate to abstain from one any more than from another. Rev. Dr. Pottier appears to us to err in this matter, diss. 3, no. 240, when he contends that according to the opinion of the Holy Pontiff these things are to be placed in the same reckoning.

2. If all masters of businesses were of such virtue and modesty that they judged this case according to what is equal and good, and did not abuse their prevailing condition, it would be better to leave this matter to be settled by a private agreement between individual workmen and the master. For we have learned from daily experience that associations do not lack their drawbacks, and that the workmen themselves must fear to no small degree the domination of agitators of the crowd.

3. Yet because, especially today, when so many are swept away by an insane desire for gain, with all religion not rarely cast aside, there is no hope that all or most will restrain themselves without some

bridle; no outcome will be reached unless, with the Holy Pontiff, we commit these matters to associations of workmen, yet at the same time striving with every effort that, by the Christian spirit with which they are formed, most dangers be removed. And, in order to avoid many complaints, it will be best if in this manner, as is already customary in England, one scale of wages to be paid for the individual trades is established for the whole region, and a different one is not established in another factory.

454. You will ask whether the things said thus far can be transferred to a tenant farmer who leases a farm, so that his sustenance must be reckoned by the lessor among the expenses which are first to be deducted from the expected fruits.

Reply. The case of that tenant farmer and of the workmen of whom we were treating is plainly dissimilar. The latter let out their labors and are hired; the former hires fields which are let out. The workmen are occupied in another's business, the tenant farmer in his own. It does not pertain to the workmen with what prudence affairs are administered and wares sold; the entire composition and ordering of the business pertains to the tenant farmer. In what manner the fields are prepared for grain, with what crops the lands are sown, of how many heads of cattle of the larger and smaller kinds, of how many farms and pastures the whole agricultural undertaking consists: these principal points, with which the hope of fruit is most closely joined and connected, are determined by the tenant farmer himself, and by him alone, as master of the business.

By what rationale, therefore, could you weigh such dissimilar cases on one balance and oblige lessors of land to enter in some manner into the hazard of another's business?

You will say: Tenant farmers labor on another's land.—Just as shopkeepers operate a shop in another's building, just as employers themselves, even the greatest, sometimes rent a factory and very often carry on business with another's money; yet we shall say that all these administer affairs at their own risk. Namely, the tenant farmer labors on another's land as regards ownership, **I concede**; as regards use, **I deny**; for the use of it is assigned to him by the lease of the farm.

Nor should you bring forward the passage of St. Paul, Second Epistle to Timothy 2:6: "The husbandman that laboreth must first partake of the fruits." For, to speak openly, this passage appears to us to contribute little here, since the words and the intention of the writer are directed to a different argument. The words, I say: for the Apostle neither treats definitely of a husbandman who has hired a field, nor declares what portion ought first to fall to him; nor does he compare the husbandman by name with the owner of the field and depress the latter's right below the right of the tenant farmer. But how far the intention of St. Paul stands from our case becomes manifest from the connected discourse. For by these similitudes he wills to exhort the disciple to care diligently and zealously for the spiritual office. If he has not performed this, the crown will be taken away from him, just as "he who strives in the contest is not crowned unless he has striven lawfully (v. 5)." But if he has vigorously procured the salvation of others, he himself will rejoice first in spiritual goods, just as the husbandman enjoys the fruits before those who have procured them for themselves by purchase or another title.⁶

⁶ "St. Paul means that the bishops and those who, under their direction, labor for the salvation of their brethren do not lose their effort. The first fruit of their labor is for themselves. By laboring, in the proper dispositions, for the salvation of others, they thereby assure their own salvation." Drach and Bayle, *La Sainte Bible*, in this place. Indeed, there were some who, pressing the force of the word "laboring," interpreted the passage approximately as though the Apostle had

said: not the idle husbandman, but the laboring husbandman, must first partake of the fruits. Thus Bisping and Beelen, in this place.

Therefore, we cannot assent in this matter to Rev. Dr. Pottier, who in diss. 3, nos. 233–234 brings forward approximately these rationales. Moreover, in no. 235, he acknowledges as something manifest that the matter of the stipulation of labors and of the hiring of fields “is altogether diverse.” Therefore, unless we are mistaken, he will readily approve this other defense of tenant farmers, to be appended immediately, whose cause we certainly judge worthy of soliciting the minds of good men, since they greatly benefit the republic no less by their religion than by the kind of their craft.

Although, where there is no stipend, the lower limit of a stipend cannot be treated, the limits of the just price, that is, of the rent of fields, are nevertheless not therefore to be denied. Cf. Thesis XXV. And certainly the rent to be paid by tenant farmers would be excessive if it were established so high that from agriculture prudently undertaken, and therefore on a farm neither too small nor without sufficient “capital,” they commonly could not gather for themselves fruits by which they would obtain: a) A suitable recompense for their own labor; b) the customary interest of the capital; c) compensation for the hazard itself, that is, the hope of mere profit by which the danger of loss is compensated.

But this, as we already warned, is the common right of all who, undertaking a business, at the same time rent a building or receive money on loan.⁷

⁷ The *Collationes Tornacenses* [Tournai Conferences], November 1891, no. 351, discussed this argument in a plainly similar manner.

N.B. It is evident that a tenant farmer, when there has been an unusual sterility, can use the privilege by which the law itself has defined what must then be yielded to equity.

Chapter III: On the Reciprocal Duties of the Master and the Workers After the Hiring Has Been Made

Doutreloux, *Lettre pastorale sur la Question ouvrière* [Pastoral Letter on the Labor Question]; Liberatore, *Principii di economia politica* [Principles of Political Economy], pt. 2, nos. 108–126; Lehmkuhl, *Arbeitsvertrag und Strike* [The Labor Contract and the Strike]; Antoine, *Cours d'économie sociale* [Course of Social Economy], chap. 12, arts. 3, 4; chap. 14; chap. 15, art. 5; De Gryse, *De Contractu conductionis* [On the Contract of Hiring], pp. 68–144; Biederlack, *Die sociale Frage* [The Social Question], pt. 2, chap. 2; Dehon, *Manuel social chrétien* [Christian Social Manual], pt. 1, chap. 8; Harmel, *Manuel d'une corporation chrétienne* [Manual of a Christian Corporation]; Périn, *Le patron* [The Employer]; Castelein, *Le Socialisme et le Droit de propriété* [Socialism and the Right of Property], chap. 9, p. 289 ff.; *Institutiones philosophiae moralis et socialis* [Institutions of Moral and Social Philosophy], pp. 393, 395–403; Pottier, *De iure et iustitia* [On Right and Justice], diss. 3, nos. 184–191; Ed. Capelle, *Le problème actuel* [The Present Problem], pt. 3, chap. 5; and the work published by the Catholic circles of France (*œuvres des cercles catholiques* [works of the Catholic circles]), with this title prefixed: *Questions sociales et ouvrières, Régime du travail, VIII. Nature du contrat de travail* [Social and Labor Questions, Regime of Labor, VIII. The Nature of the Labor Contract], p. 231 ff., p. 281.

Article I. Conclusion with Notions and Arguments

THESIS XXX

The relation of the hiring of labor is accompanied by duties of justice: on the one side, of preserving intact both the person of the worker—that is, his body and soul—and his honor; on the other side, of not injuring the property or reputation of the master.

The same relation is attended by a bond of a certain closer kinship, by which each is joined to the other, and by a debt of quasi-piety in the master, but of observance in the worker.

A certain imitation of master-servant society is especially consonant with nature.

455. I. State of the question. 1. The intention of the thesis is directed to perfecting the account of the stipulation of labors by describing those reciprocal duties and that relationship which are in some manner joined and coupled with this kind of agreement.

2. The conclusion's formula shows that there are three parts of the thesis, of which the duties are defined by the first two, while by the third there is defined that which agrees with the desires of nature rather than being strictly commanded by it.

3. Yet the relation of the duties to that contract is not one and the same. For the duties of justice which are adduced do not arise so much from the agreement as through its occasion, insofar as the very danger of violating them ought to exhort us to direct our mind more toward fulfilling them; while the agreement itself can be declared mediately the author and effecter of the other duties.

4. Opinions. Omitting the first part, against which there has been more sin in practice than will or opportunity for disputing, Socialists and Liberals oppose the other two parts together, yet for a different rationale. For the Socialists, from their principal dogma concerning the absolute equality of men, reject everything except those things which are referred to strict justice; while the teachers of liberalism long passed over in silence any duties of the master other than paying the promised wage, and the disciples too often plainly neglected the exercise of those duties. But if at times a certain humanity is commended in that school, the whole matter ends in temporal advantages and is generally so arranged that it induces no greater conjunction of persons and souls.

No Catholic is formally contrary to us here. Yet what things are to be referred to precepts and what to counsels; and, among the precepts, what things are commanded by justice, what are governed by another virtue, and what is the more suitable manner of inculcating them in minds and exacting them—this has often been left uncertain or stated ambiguously, nor is it without controversy. Therefore, we shall speak more explicitly concerning these things in the corollaries or scholia, according to our powers.

In this dissertation we shall use the Encyclical *Rerum novarum* as our principal support.

5. The terms are explained.

Of the hiring of labors: By labors here we understand those which are said more properly to be hired, because they place the person himself under some determination and direction of another. Therefore, the present consideration is less extensive and must be almost circumscribed to domestic servants;

then to those who exercise their powers in factories; and finally to clerks and officials who discharge lower services.

The common relation: We say this both lest we appear to treat here special cases either of domestics or of those for whom the master in some manner takes the place of parents themselves, and so that we may signify that the things said avail in every agreement of this kind.

Is accompanied: that is, the duties are present concomitantly, proceeding not from the contract but from the rights of the human person.

Duties of justice: of commutative justice.

On the one side: that is, in masters or employers.

Of preserving intact: that is, of inflicting no detriment whose fault is deservedly imputed to the master himself.

What this demands we shall say distinctly in the corollary, no. 464. Here it will suffice to warn that we require no other positive care than that which comes down to the execution of the negative duty of harming neither the person of one's neighbor nor his goods.

Both the person of the worker. Take the person, namely, together with those parts which so pertain to it that they are under the dominion of no one except God alone. For the use of our own body and soul is indeed conceded to us, but not dominion itself. For those things which constitute man as a possessor cannot at the same time be possessed by man in the strict sense.

That is, his body, which regards dangers to life and to the integrity of the members; the powers to be nourished and restored; illnesses and premature old age or infirmity to be warded off.

And soul, whether you regard the intellect or the more strictly moral life, which consists of human acts.

And his honor, which is violated by reproaches and affronts. Honor is now placed among goods properly possessed.

On the other side, as though from the contrary part of the worker.

Of not injuring: therefore, it is again a question of a negative prestation.

The property: for example, instruments and animals.

Or reputation of the master: through detraction or calumny, to which workmen are not rarely accustomed to be moved by a certain hatred or vengeance.

The same: I mean the agreement by which the labors are hired.

Is attended: mediately, through those things which it proximately induces.

By a bond of a certain closer kinship, by which each is joined to the other. Thus, in the order and duties of charity, the master and worker are to be regarded as prior to strangers in relation to each other. Moreover, when we say a **certain kinship**, we signify that this very kinship varies according to the object of the contract and the familiarity which is demanded or has customarily come into use.

And by a debt of quasi-piety in the master. Therefore, besides the duties of a special love, and of that love as reciprocal, we acknowledge proper duties of either party, which arise on account of the

unequal place in which, once the agreement has been made, we thus confess that the master of the business and the worker are established together. For piety, which is the virtue that properly governs the order between parents and children, taken more broadly is placed over an order bearing some likeness of that which is sanctioned by nature between superiors and inferiors.

But of observance in the worker. By this name is properly designated the virtue by which those things which must be rendered to superiors are directed.

These duties, both of quasi-piety and of observance, pertain to the fourth precept of the Decalogue.

Is especially consonant with nature. That is, if it can be done, nature, although it does not strictly command it, has it among its desires and appears to exhort it by the very beginnings which are demonstrated to be contained in the agreement once made.

A certain imitation of master-servant society. Master-servant society properly so called is contracted with servants who are admitted permanently into the household. And this society is a certain extension of the family, an enlargement of that society by which marriage and birth join parents with children.

The imitation of that society is composed of greater zeal for the common good of both, a certain more universal care by which the master provides for the good of the worker (*Institutions patronales* [employer institutions]); and a more grateful mind, trust, and, to the extent that the faculty permits, benevolence with which the worker regards the master. Moreover, in the corollary, no. 467, we shall endeavor to set these things forth more distinctly.

II. PROOF

456. A. Of the first part. *The common relation of the hiring of labor is accompanied by duties of justice: on the one side, of preserving intact both the person of the worker—that is, his body and soul—and his honor; on the other side, of not injuring the property or reputation of the master.*

1. As regards those things which are said to be preserved by the master for the worker.

The matter is plainly established, provided that you attend for a little while:

That it is the worker's right that these things be preserved intact;

That self-love itself prevents the worker from being judged to yield his right;

That in the action by which the master exposes the body or soul to dangers or assails honor there inheres some moral coercion, by which it comes about that external consent does not remove that involuntariness without which there is no injury terminatively. Cf. Thesis IX.

2. As regards those things which are said to be preserved by the worker for the master.

The matter is no less evident, because he too, unwilling and in some manner coerced, will bear his things becoming worse and detriment being brought to his reputation.

457. B. Of the second part. 1. *The same relation is attended by a bond of a certain closer kinship by which each is joined to the other.*

This is already gathered from the authority of theologians, who agree concerning this matter, and from common sense. For that knowledge is spread among the people, so that in regions not yet

corrupted by the contagion of socialism, if workers need anything, they spontaneously flee to the master as to one more closely joined, before they approach other strangers; and at the same time they have been accustomed to grieve at the master's misfortunes or rejoice at his praise as though at their own lot.

Moreover, the same is established by reason. For the order of charity toward one's neighbor is founded wholly upon union, society. But every hiring of labors is attended by a certain union and society in the execution of some intended work, superadded to the essential union by which all men are joined together. There is also added the rationale of mutual benefit, since one serves the other, which rationale is especially accustomed to join men.

2. And by a debt of quasi-piety in the master, but of observance in the worker.

For that debt will arise as soon as the hiring of labors is shown to make the condition of the worker and master unequal, and indeed in such a way that the latter becomes in some manner the superior of the former.

For when that relationship is introduced, duties will arise of which it is itself the title.

But: Every hiring of labors refers the worker to the master in this manner.

Therefore: The conclusion follows.

The minor premise is proved. Such is the character of this contract that it immediately regards not the fruit of the labor of the person but the labor itself, the labors themselves. Since these cannot be separated from the person, through that contract, as Schmalzgrueber already said, bk. 3, tit. 18, nos. 1, 2, 17, the very "person is handed over for another to use"; the "person is hired out for labors." Therefore, there is necessarily introduced a certain relation between the person of the one letting and of the one hiring. But that relation is of the one using and the one to be used; or, in the order of attaining the end of the work undertaken, of the principal, moving, and directing cause, and of the instrumental, moved, and directed cause.

Therefore, the master (of himself or through an agent) becomes in some respect a principle of governance as regards the worker. But (from St. Thomas, II-II, q. 102, art. 1, corpus) this is the very title of superiority or dignity to which honor and reverence are owed, and which cannot make itself immune from the consequent burdens and duties.

2. From the labors promised there arises a certain cooperation of master and worker toward one end. But the cooperation of several toward the same end cannot be efficacious unless there is a head moving efficaciously, or imperatively. Now, that head here is necessarily the master. For his parts are the more principal, since he orders the whole business. Moreover, he either devised the undertaking or succeeded to the place of its inventor, and the affair is administered at his risk: "The loss of a thing, however, falls upon its owner." Therefore, he is most truly called the master of the affair undertaken. Therefore, authority necessarily belongs to him in the order of perfecting this affair.

By these arguments it is also sufficiently shown that the excuses which can be brought forward are vain. For the special rationale of a particular contract cannot take away the essential generic mark of the letting and hiring of labors. The varying condition of the worker is plainly extrinsic to the common rationale of a hired worker such as we have described it. Finally, the varying form of the society brings it about that the authority of the master is constituted or exercised in a varying

manner; but not that the nature of the agreement existing between the master and the workers is changed.

The conclusion is confirmed by demonstrating directly the titles of the duties of quasi-piety and observance.

a) **Of quasi-piety.** For just as an adult worker who himself determines the account of his labor will have to observe positively toward himself certain things which pertain to the suitable culture both of body and of soul, so, when he hands himself over to another to be directed, he necessarily transfers to the latter a part of that care which in a governor pertains to quasi-piety.

b) **Of observance.** For the deference consisting of obedience and gratitude, which pertain to observance, is founded upon excellence of status together with some power. (St. Thomas, II-II, q. 102, art. 2, corpus.) But excellence together with the power which belongs to a superior insofar as he is a mover is not absent from the hirer of labors, since, in procuring the very business, he governs persons. At the same time, he is to be regarded as the author of a benefit, at least by this rationale, that he furnished the worker an opportunity of earning.

458. C. Of the third part. A certain imitation of master-servant society is especially consonant with nature.

Besides the fact that all things by which honorable friendships are cemented correspond especially to the desires of nature, nature cannot fail to approve an institution whose seeds it itself has cast and whose beginnings it has made.

But: In the very condition of master and workman and in the necessary relationship of each are found the seeds and beginnings of some master-servant society.

Therefore: The imitation of this society is especially consonant with nature.

To the minor premise. The worker is generally situated in a humbler condition, in which he is pressed by various necessities and is subject to various seductions. The master, by contrast, *per se* enjoys both that culture of intellect and those resources by which he is able to be a most useful protection.

Moreover, if the necessary order which obtains between an employer and a workman permanently attached to some factory is well preserved, the latter will be inclined to foster a grateful mind and to show trust toward him whom he now knows to be the author of more than one benefit to himself; while the master will be borne by an affection of humanity and benevolence toward the worker as toward the most useful helper of his undertaking. Does not a certain more universal providence and a closer conjunction imitating master-servant society, of which it can be called an enlargement, flow in a ready channel from that capacity and zeal?

This is confirmed by these words of Leo XIII, writing on July 10, 1895, to the Bishops of Belgium: "Nor is this the least thing: to bring it about that, with the reverence which is plainly fitting, obedience be rendered to the supreme counsels of God, who willed there to be a disparity of classes in the community of the human race and a certain equilibrium among them from friendly cooperation; thus, let the workers in no way cast off observance and trust toward their employers, nor let anything of just kindness and provident care toward them be lacking from the latter."

And already above, no. 238, we gave from the same Pontiff this elegant description of the counsels of God: “The substance is this: whoever has received a greater abundance of goods by the gift of God—whether they be goods of the body and external goods, or goods of the soul—has received them for this reason: that he may employ them for his own perfection and likewise, as a minister of divine Providence, for the advantage of others.” And, in the same place, we took the same document from the First Epistle of St. Peter 4:10.

459. III. Difficulties.

1. The master, in hiring a workman, often directed his mind in no way to these duties. Therefore, he is not bound to them on account of that agreement.

Reply. I deny the supposition: that an intention is required for contracting debts which either do not arise from the agreement or are necessarily joined to the principal will. “In taking this man into my house, I did not have the intention of making this agreement with him.—But God made it for you.” Thus vigorously Bourdaloue, *Sermon sur les devoirs des maîtres et des domestiques* [*Sermon on the Duties of Masters and Servants*].

2. When the company concerned is “anonymous” [a joint-stock company], the power is in the hands of so many persons; shareholders and workers are so unknown to one another, and shares so often change possessors, that these duties cannot be fulfilled and the relation whence a special debt of charity arises appears fictitious.

Reply. Just as through common action they delegate administrators to whom honor and obedience are rendered, by the same rationale they can and must delegate them to fulfill these debts.

This is common to every society: that certain physical persons act in its name. Nor does the frequent change of “shareholders” stand in the way, since each predecessor transfers his rights and debts to his successors. And whether through a certain fiction or otherwise you explain the duties of justice which certainly belong to this genus of moral persons, with no greater difficulty and by no dissimilar rationale will you explain the duties of charity and the relation upon which they rest. Therefore, it pertains to each of the “shareholders,” through his vote, to intend this: that persons who can and will satisfy these duties be placed over the work and furnished with such a mandate. But if someone did not prevent this from being done, he can be excused from those duties which cannot be fulfilled personally in a proportionate part—unless perhaps, on account of prohibited cooperation in evil, he cannot possess the “shares” themselves. Concerning this question elsewhere.—But what they can do in this matter is apparent from recent examples.¹

¹ Cf., for example, that which the French railway companies provided. It is reported in *Bien Public*, May 7, 1896, p. 32.

Article II. Supplements to the Doctrine

I. COROLLARIES

460. **The permanence of the duties of quasi-piety and observance.** Equality will never legitimately be reached to such a degree that, apart from a certain obedience, workers no longer owe any signs of honor to those who conduct the business. Nor will nature permit the duties of quasi-piety in the master of the business to perish altogether. Yet it can happen that these come down to

very few things; and because both of these duties regard each other mutually, it is necessary that as much as you take away from one, so much you remit from the other.

Indeed, the matter is not substantially changed even if the business should belong to an association of workers. For then they bear, as it were, a double person: in the assembly itself, by common vote, they decree concerning the things to be done; but outside those gatherings they have no power; and, as workers, they are governed by others to whom they have committed the business to be procured, almost as in a democracy the people are subject to magistrates, deputies to ministers, and so forth. The arts and snares which, as long as the just contract remains in force and is rightly observed, prohibit the master from ordering the business in this or that manner are also to be reprov'd. And neither can those work stoppages which are lightly decreed be justified in any way; for example, as soon as a worker has been fined or dismissed, and so forth.

461. Because in the letting of a work the workman himself directs his efforts in the operation and furnishes to the one letting nothing but the work as an effect, no peculiar relation of persons arises *per se* from that contract.

462. Because the hired workman is constituted in a humbler place only after the agreement has been made, the efforts of workers who join their powers with this counsel—that they may be able in reality to deliberate as though equals of the master concerning the various conditions of the contract, for example, concerning the wage, and so forth—cannot *per se* be disapproved. Nor is it of itself repugnant to justice that in the contract itself they stipulate certain things concerning the very manner of administering the business, which they judge will redound to their own good. But it belongs to experts in the matter to investigate what participation of the workers conceded by contract, or what diminution of the master's discretion, ought to be recommended and will not too greatly impede the good administration of the undertaking.

462 bis. To this belongs the question of the **internal government of the factory** (*règlement d'atelier* [factory regulations]).

1. Once the labors have been hired, there must necessarily follow a definite rule according to which the whole affair is conducted in the factory itself; that is, according to which both the operation of the workmen and the administration of the employer are ordered.

Therefore, it is customary to ask to whom it belongs *per se* to establish the government of the factory in this or that manner.

Some, indeed, considering possession of the place, assign this province to the master of the business alone; for, just as he could prohibit all others from every access, so too he can establish these or those laws under which he is willing to receive workers into his factory.

Others, on the contrary, considering rather that by these ordinances the prior agreement is, as it were, continued and perfected, and that it was bilateral, judge that what was begun by mutual consent must be completed by the same.

2. Before we pronounce our view concerning this matter, it seems that the following must be distinguished:

a) Certain immutable parts which have already been sanctioned by a higher law, whether divine or human. Of this kind are the various duties of justice, humanity, quasi-piety, and observance which, in

the proof itself, we saw to follow the common rationale of the hiring of labors; and likewise any things prescribed by positive law, as, for example, in Belgium after the laws concerning this kind of agreement were enacted in 1896 and 1900.¹

¹ Law of June 15, 1896, concerning Factory Regulations; and of March 10, 1900, concerning the Labor Contract.

b) Other parts which are defined by received customs. These seem already to have been admitted by tacit stipulation and cannot be varied except by mutual consent.

c) The remaining parts which, after regard has been had to higher laws and customs, remain uncertain. The question is therefore properly confined to these.

3. Now, the reciprocal rights of the workers and employers concerning these matters can be conceived as settled in three ways.

Either every determination is permitted to the free discretion of the master;

Or nothing is done except by common consent;

Or rather the workers themselves lay down the conditions upon which they are willing to hand over their powers to be used in a given establishment.

These three modes can also be understood in two ways: that is, either so that, once a determination has been made, it binds both parties; or so that the one establishing it may depart from the prior determination at his discretion, almost as a law is abrogated and changed by the legislator.

Come then: by what means can it be proved that anything is found in the natural law which is repugnant to one of these modes?

Nor—and this must be carefully observed—is that power entrusted to the master always to be judged burdensome to the workers.

For it can easily happen that the workmen are altogether unfit prudently to decide or advise anything concerning these matters; and it also happens that, being agitated by contrary wishes, they fall into perpetual disagreements unless the matter is determined by the master's authority.

4. Yet, in general, the following things must be observed concerning these modes and the matters to be ordered.

a) **As regards the modes**, the first mode described by us better protects the authority of the employer, and it has fewer disadvantages the more he himself is worthy of esteem and trust.

The second is more congruous with parties who are perfectly equal to each other.

The third seems difficult to reconcile with due observance, insofar as it provides an easy occasion for violating it. Therefore, one may say that it is less consonant with the desires of nature.

b) **But the matters which must be settled** are to be referred to a twofold genus:

For some pertain more to the actual exercise of the craft than to the person; they are an ordering of the work rather than of the labors. Thus, for example, if it is asked with what instruments the work is to be done, what material is to be fashioned, and so forth.

Concerning these, it is better that the master of the business exercise discretion. And it is also expedient that, on account of an extraordinary circumstance of the business, he be able to extend or

reduce the period of labor.

In other matters the hiring of labors itself is more directly concerned: what the beginning, duration, and interruption of the work are to be; and in what manner the assessment and payment of the wage are to be made.

If, unless something stands in the way, it is *per se* better to foster equality among men, we can honorably desire such a culture among citizens that these things can be governed by mutual consent without disadvantage.

Yet concerning certain matters it will easily be doubted whether consideration of the person hired or of the undertaking should prevail. Thus, for example, it is of great interest to the workers who, besides the director of the factory, are appointed over them as supervisors of intermediate rank. Yet the prudent selection of these men can also contribute not a little to the good outcome of the business. Therefore, one can scarcely judge universally whether the employer's absolute power is to be preferred in appointing them or is to be moderated by certain safeguards in the agreement.

Our conclusion, finally, will be this:

I. As a matter of right.

a) No mode established in custom for determining the government of the factory is *per se* contrary to justice.

b) Either contracting party is free to stipulate for himself either some or the principal parts in establishing the government of the factory.

Nevertheless, if there is a departure from received customs, this agreement can easily contain a certain new burden which must be compensated, by some variation of the price, to the one upon whom it is imposed. For the ordinary price is judged to be adjusted to received customs. Moreover, this burden or loss of advantage will never be absent, unless perhaps the workers' lack of skill alone appears to have been the reason why the determination of the matter was permitted to the employer, so that he exercised merely a kind of guardianship.

II. Concerning the present state of affairs.

In present circumstances, we do not think that the order of workers has advanced so far in the cultivation of morals and intelligence that it could usefully claim for itself certain parts in ordering the factory. And designs for revolution and the diminished religion of many stand rather in the way of their peaceful participation.

Therefore, in our opinion, it was prudently enacted in the Belgian Parliament that the determination of the government was assigned to the masters of the factories, while various safeguards were adopted at the same time concerning the posting in the factory of placards containing the regulations, concerning the regulations' observance and their not being changed before a definite day, lest the workmen be commanded or vexed according to caprice.²

² We set forth these laws briefly in the *Manuel social* [*Social Manual*], 2nd ed., 1904, pp. 279 and 291.

463. The duties of the hired worker, if we wish to embrace them universally in words, contain:

1. **The observance of justice** both in making and in executing the agreement. To this heading must be referred the secret concerning the practice of the craft, which, either formally or tacitly, is not rarely a part of the fidelity promised. For the proper method of practicing the craft is among the goods of the master which justice wills to be guarded diligently by the worker. Nevertheless, unless—as will easily happen—it is morally nothing, that burden of keeping the secret, when it is added to the customary manner of the prestation, seems *per se* to require compensation by some increase of the wage.

2. **A closer charity.**

3. **The duties of observance:** honor, reverence, a grateful mind, and obedience in those things which are promised by contract.

464. The duties of the master toward an adult worker. Something of principal importance in this matter, besides knowledge of the duties, is their very distribution, so that it may be clearly known to which virtue each must be assigned.

Therefore, we shall now endeavor suitably to gather them into their genera.

1. **CONCERNING THE DUTIES OF JUSTICE.** a) **The rules by which one may judge concerning these seem capable of being proposed as follows:**

α) An injury is committed if some burden is imposed which is compensated by no advantage or greater remuneration; for it is scarcely probable that such things are undertaken gratuitously, by spontaneous will.

β) Every burden by which a worker suffers damage in the goods of soul or body is to be regarded as unjust if, apart from a formal stipulation,³ it is virtually imposed by the will of the master, or if the worker is ignorant of the future damage. For he is judged unwilling that these things should be added to the obligations undertaken; and ignorance removes the voluntary no less than fear itself.

³ Therefore, those things which are proposed for execution before the agreement is made and those which are added to the agreement already made must be carefully distinguished.

γ) The stipulation even of an illicit thing, although base and deprived of the effect of a moral obligation, is nevertheless not unjust, provided that an equitable price is promised for the whole burden. For here that saying avails: *No injury is done to one who consents.*

b) **Therefore, concerning the various cases we shall speak as follows:**

Insults of which either the employer himself or his ministers, with his permission, have been guilty are opposed to justice. For, on the one hand, these are outside the agreement and are not compensated by a price; on the other, he who assigns to the worker a place in which to exercise his craft at the same time pledges moral diligence in averting these injuries.

For a similar reason, the employer is bound in justice to take care that, from the arrangement of the factory or the ordering of the labor, no danger impend over the health, life, or limbs of the worker which can be removed by moral diligence, according to the nature of the work to be done and the inventions of the arts. For although the precept *do no harm* is negative, it nevertheless contains an obligation of moral diligence lest damage be inflicted by your deed. Moral diligence, moreover, is that which, according to the importance of the matter, can be furnished by a prudent man without

excessive difficulty. But those detriments which cannot morally be removed must at least be repaid by a greater wage.

He is also bound in justice to take care that, from the manner in which matters are arranged or from the license permitted to others, the workers are not placed in a proximate occasion of sinning. For the workman is not to be judged to approach this voluntarily, nor does he have a choice of the associates and circumstances among which he exercises his powers.

Labor to be undertaken on a feast day: α) It must be compensated by a greater price; β) after the agreement has been made and while it remains in force, it cannot be imposed without necessity; γ) if an agreement is made concerning it, this agreement, although often to be disapproved, is nevertheless not repugnant to justice itself.

These things, *a fortiori*, must be transferred to the burden of omitting Mass.

Concerning nocturnal labor, or labor that is excessively prolonged or in some manner consumes one's strength, the same must be said as concerning the burden of furnishing labor on a feast day.

2. CONCERNING THE DUTIES OF CHARITY. From the common rationale by which we are bound by a debt to provide first for those nearer to us, and by which also, the greater authority anyone possesses, the more gravely he gives scandal by his bad example, there arises in the master both a stricter negative duty, that he himself not give scandal, and a positive duty of fraternal correction and assistance; these are according to his means and the worker's need. Masters will be excused from the duty of correction if it is foreseen to be fruitless or produces a grave disadvantage, especially one joined with slight hope of fruit: as when the workers must be changed frequently and do not seem likely to restrain themselves from lust except for the hour and under your eyes.

3. CONCERNING THE DUTIES OF QUASI-PIETY. To this pertains positive care concerning the religion, morals, health, and strength of the worker, so that nothing excessive is imposed; and so that, after regard has been had to the circumstances and necessity, matters are ordered as a prudent workman ought to have done in his own case, lest he fail in the duty of loving himself in an ordered manner.

465. Concerning duties toward adult women. “What an adult and robust man can do and strive to do, it is not just to demand from a woman or a child.... Thus certain trades are less suitably fitting for women, who were born for domestic work; and this work greatly safeguards the dignity of the female sex and by nature accords with the instruction of children and the prosperity of the family.”

Thus, most wisely, spoke the Pontiff in the Encyclical *Rerum novarum*. Nevertheless, if a woman is her own mistress, the things said concerning an adult workman generally avail here, so that an injustice is then committed only when she is made to bear inequitable burdens beyond the agreement or without compensation. Except, however, if a certain kind of labor appears likely to bring harm to offspring soon to be born. For the rights of the offspring cannot be taken away by any consent of the parents.

From quasi-piety, however, the master of the business is charged with the care that women be kept from improper labor and that, according to the teachings of the Supreme Pontiff, the entire ordering of the business in which they take part be adapted at once to the weakness and to the honor of their sex.

466. Concerning duties toward children. The case of children is far different, for their very levity and imprudence render them incapable of validly consenting to burdens excessively contrary to their soul or body. Nor does the assent of the parents make the right of children less inviolable or excuse the employer. Therefore, one sins against commutative justice who demands from youths labors that are excessively heavy, excessively long, or excessively dulling to the mind, so that their strength is diminished or their intelligence is rendered incapable of a becoming cultivation.⁴ What shall I say concerning the corruption of morals, which imposes a care all the more solicitous and intent the more easily it finds an occasion to infect youth?

⁴ Leo XIII warns that great care must be taken concerning children, lest the factory receive them before age has sufficiently strengthened body, intelligence, and soul. For premature exertion crushes the powers bursting forth in childhood, as though growing verdure; and from this the whole education of the child will perish.

It will not be enough for piety to remove the proximate occasions of bodily or spiritual ruin. It will move the employer, during the time in which the youths are entrusted to him to be governed, to supply the providence of a diligent parent.

But those are especially to be praised who devote labor to the education of children itself; who, while using the powers of the youths moderately, endeavor at the same time to form them in virtue, a craft, and letters.

467. The imitation of master-servant society regards a more intimate conjunction, by which, beyond the services owed, the workers regard almost as their own good and gain whatever advantage befalls the master, and desire his very person and whole household to be safe and honored; and the master in his turn fosters his subordinates and their wives and children with an almost paternal affection.

To this would pertain mixed associations of masters and workers, unless civil hatreds and the very disparity of conditions now made this other arrangement more desirable: that from separate associations of masters and workers a few of each order be selected to communicate mutual counsels.⁵

⁵ Cf. what was said in our *Manuel social* [Social Manual], in the chapters *Les Influences sociales* [Social Influences] and *Les Institutions patronales* [Employer Institutions]. The Most Illustrious Lord Doutreloux treated associations excellently in the pastoral letter cited.

To this pertain certain common solemnities, both sacred and profane, and various institutions by which agreement of minds is induced.

To this pertain counsels and methods by which are removed the dangers which are threatened either by depraved associates or newspaper writers, or by usurers and unjust merchants who derive profit from the simplicity of the poor, or which arise from their own negligence or passions.

To this, finally, contribute every kind of assistance and the various teachings and customs which, received from their forefathers, truly Christian masters endeavor to preserve even today. Several works treat these matters more fully; for example, the cited works of Messrs. Harmel and Dehon, or R. P. Castelein, *Le Socialisme et le Droit de propriété* [Socialism and the Right of Property], p. 289 ff.: *Les traditions du bon patronat* [The Traditions of Good Employers].

II. SCHOLIA

468. Concerning the intervention of public power. I. BEGINNINGS OF THE DISCUSSION.

That the various matters which we have touched upon thus far are of a kind for which public care must be taken is plainly taught by the Encyclical *Rerum novarum*, and cannot of itself be doubted if for a little while you hold to the right definition of perfect society.

For whether you consider that what is at issue here is the physical as well as the moral good of the order which is numerically the greatest in the state, or direct your mind to how much it is immediately in the interest of the commonwealth that “affairs be peaceful and ordered; likewise, that they be directed according to the commands of God and the principles of nature; that the whole discipline of domestic life be observed and religion cultivated; that upright morals flourish privately and publicly; that justice be held sacred and that some not violate others with impunity; that robust citizens grow up, capable, if the matter should require it, of assisting and defending the state” (Encyclical *Rerum novarum*), you cannot doubt that you should assign solicitude of this kind to the proper province of rulers.

Yet one should not therefore immediately appeal to laws by which all these things are to be defined. For there can be three reasons on account of which one must abstain from legal sanctions: **a)** Because a legal remedy may be foreseen to be ineffective, since precepts which are not observed or are frustrated of their effect are accustomed to contain more impediment than protection; **b)** because it may not be necessary, since “no more is to be undertaken by laws, nor is one to proceed farther, than the cure of disadvantages or the repulsion of danger requires” (Encyclical *Rerum novarum*). Therefore, if either from culture and customs matters are of themselves arranged suitably enough, or it appears that the evils can be met by private efforts, it is better that the ruler add his protection to these undertakings than recall the entire matter to himself; **c)** because it may appear too difficult to define the matter by laws, so that it must be feared that something worse may follow from public sanctions.

2. The conclusions seem capable of being proposed briefly as follows.

a) When it is a question of those who are weaker by age or sex, sanctions are opportune which permit only that manner of labor, establish those intervals and rest, and prescribe those safeguards which are universally required in view of the conditions of childhood and adolescence or of the female sex.⁶

⁶ One must prudently tend to this: that women no longer have any other parts in the exercise of industries except those which plainly accord with domestic cares and the dignity of their sex. Thus it can truly be said that woman must be restored to her home.

For in the present corruption of faith and morals, what hope is there that those defenseless and weaker persons will be protected sufficiently by custom and usage?

b) More mature consideration is needed before times and rules are prescribed for the labor of adults itself. For the wretched conditions in which certain trades are practiced, if they have as their cause a necessity to which the employers themselves are subject on account of excessive competition and more universal usages, can scarcely be removed by law unless the matter has first been agreed upon among various nations; but if they proceed from the humbler place in which the workers are situated, the workers themselves, through powers joined in associations, will not rarely be able to reject harsher stipulations, so that a law lacks necessity.

Therefore, it seems that there is less to prevent decrees from being enacted concerning those things whose measure is more stable and the same for all, especially if a certain higher rationale is added, as in the observance of feast days. For many other things, which must be accommodated to circumstances that are variable and in motion, will *per se* be more safely left to the judgment of those whose interests are concerned; and the useful intervention of public power will rather look to this: that it receive under its protection the associations and institutions by which workers are placed in a more equal position in deliberating upon the agreement.

To this pertains the following from the Encyclical: “Nevertheless, in these and similar cases—such as how many hours are to be worked in each kind of trade, by what safeguards health is especially to be protected in factories—lest the magistrate intrude himself too importunately, especially since the circumstances of things, times, and places are so various, it will be better to reserve these matters to the judgment of the associations of which we shall speak below, or to enter upon some other way by which the interests of wage-earners may, as is fitting, remain safe, with the protection and aid of the commonwealth being added if the matter should require it.”

Nevertheless, when another way is excluded, the ruler is not prohibited from directly remedying evils that threaten: “If at any time it should happen,” Leo XIII had observed previously, “that religion be violated among the workers by insufficient opportunity being granted for the duties of piety; if danger threaten the integrity of morals in factories from the mingling of the sexes or from other pernicious inducements to sin; or if the order of masters oppress the order of workmen with inequitable burdens, or afflict it with conditions alien to the human person and dignity; if health be harmed by excessive work not adapted to sex or age—in these cases the force and authority of the laws must plainly be applied, within definite limits.”

N.B. 1. It was wisely provided by the recent laws of Belgium, lately enacted concerning the labor of children and women and concerning the safeguarding of the welfare of workers in general,⁷ that the more particular determinations should be entrusted to the King, with a certain faculty of dispensing being granted at the same time.

⁷ Principally, these are the laws of December 13, 1889; June 15, 1896; July 2, 1899; and March 10, 1900, concerning which consult our *Manuel social* [*Social Manual*], pt. 1.

2. For some years efforts have begun to be made to bring about treaties among nations concerning the prudent protection of workers. The matter has not yet reached any outcome. Mr. Brants discusses where it presently stands in an article inserted in the *Revue Sociale Catholique* [*Catholic Social Review*], January 1900.⁸ Recently, however, at the Paris Congress of 1900, an association was formed to advance these matters further.⁹ Cf. *Musée Social* [*Social Museum*], 1900, no. 8, where its statutes and various documents are reported.

⁸ *Où en est la législation internationale du Travail* [*Where International Labor Legislation Stands*].

⁹ *Association internationale pour la protection légale des travailleurs* [*International Association for the Legal Protection of Workers*]. Its seat was established at Basel in Switzerland; but in the various nations particular groups (*comités* [committees]) were formed to procure this matter.

469. Comparison of Catholic, Liberal, and Socialist doctrine.

1. **THE SOCIALISTS** deny and condemn the variety of orders; they proclaim the rights of the proletarians while remaining silent concerning their duties; and, while interpreting all present things

for the worse, they at the same time imagine in their minds a golden age in which, equality having been introduced, it will come to pass that without external coercion, without personal self-denial or care for an unpleasant duty, all things will be reduced to perfect concord by the natural inclination of the mind. These vain dreams have already been refuted by us above.

2. THE LIBERALS, on the contrary, retain the variety of orders, but direct their unequal rights too greatly toward their own good and have no positive solicitude for mutual charity. They teach the richer and more powerful to enjoy their rights; they do not teach them to turn those same rights to the good of others. And, dragging all things too greatly toward the better interpretation, they judge that matters are brought, as it were, of themselves into the best state if free choice to provide for himself is given to each. But if they devote themselves to certain advantages of men of slender means, these are generally contained in money or temporal goods; and not rarely these things are weapons—for example, a knowledge of letters—whose prudent use they at the same time omit to teach, although they can be most ruinous to one who uses them incautiously.

3. Finally, CATHOLIC DOCTRINE:

a) Omits neither the rights nor the duties of either order.

b) It refers the rights themselves, in the individuals who possess them, to an end nobler than temporal advantage—I mean, to the ultimate end of the human person. Thus festive rest is no longer a mere vacancy from labor; rather, Catholic doctrine teaches a holy use of the leisure itself, one alien to evil lust.

“Let no one understand this—that is, the necessary rest from works and labors on feast days,” says Leo XIII, “as a certain greater enjoyment of idle leisure, and much less as that cessation which many desire, the favorer of vices and the assistant of lavish expenditures; but altogether as rest from works consecrated by religion. Rest joined with religion calls man away from the labors and business of daily life so that it may call him back to contemplate heavenly goods and to render to the eternal God the just and due worship.” Encyclical *Rerum novarum*.

c) Indeed, it shows that these same rights, and every endowment or riches, are to be directed not to the advantage of the possessor alone but to the common good of others and of the state.

Therefore, the variety of orders—which the Socialists hold in hatred and fruitlessly attack, and which, as it is understood by the Liberals, appears to be without a cause and a source of hateful pride—according to the tenets of Catholics binds peace together, becomes pleasing to the humbler themselves, and is no slight promoter of common happiness.

Already above, nos. 180 and 238, we gave the passages in which, in the Encyclical *Rerum novarum*, all who excel in some thing are said to be ministers of divine Providence for procuring the advantage of others also, and the error concerning the natural conflict of the orders is denounced as a capital evil: “This is so abhorrent to reason and truth that the exact contrary is most true: just as in the body the diverse members agree with one another, whence there exists that tempering of disposition which one may rightly call symmetry, so in the same manner nature has commanded in the state that those twin classes agree harmoniously with each other and respond fittingly to each other in equilibrium. Each altogether needs the other: capital cannot subsist without labor, nor labor without capital. Concord begets the beauty and order of things.”

d) Nor is Catholic doctrine content that hatreds be absent; rather, it wills a perfect friendship of men, of which justice is the beginning—a friendship, I say, which resolves into fraternal love.

“Yet if they—the fortunate and the lowly—obey Christian precepts, friendship is too little: fraternal love will also join them to each other.” (Encyclical *Rerum novarum*.)

In sum, Christian doctrine builds upon the order of justice the more exalted order of universal charity, in which it places its principal hope: “For the desired salvation is to be expected principally from a great outpouring of charity.” Encyclical *Rerum novarum*, at the end.

Remaining Minor Question: On Work Stoppages

Liberatore, *Principii di economia politica* [*Principles of Political Economy*], pt. 2, chap. 6, art. 4; Lehmkuhl, *Arbeitsvertrag und Strike* [*The Labor Contract and the Strike*]; Antoine, *Cours d'économie sociale* [*Course of Social Economy*], chap. 15, art. 6; Cauwès, *Cours d'économie politique* [*Course of Political Economy*], vol. 3, no. 847 ff.; Rutten, *Nos grèves houillères et l'action socialiste* [*Our Coal Strikes and Socialist Action*]; Pottier, *De iure et iustitia* [*On Right and Justice*], diss. 3, nos. 169–183.

470. Various notions. 1. BY THE NAME WORK STOPPAGE we designate not, indeed, the refusal of one or a few, but the common withdrawal of many workers by agreement.

2. THE ENDS ALLEGED, if we omit the clandestine designs of those who disturb the populace, sometimes regard the commonwealth, so that the votes of the common people may have more weight in it; but more often they regard the settling of private grievances or the fulfillment of desires.

Grievances: for example, the workers complain that faith has been broken, or that a stipulation is inequitable; or they cannot bear that certain men of their own order be dismissed or treated more harshly. **Wishes and desires**, however, generally tend to this: that labor be made less burdensome or less prolonged, or be exchanged for a greater wage.

3. The impulses by which minds are either remotely disposed to attempt these measures or anger proximately bursts forth are:

- a) True evils and indignities to which workmen are subject;
- b) Minds hostile to the fortunate, whether from pride or from evils which have long been tolerated, but with difficulty;
- c) The true wishes and hopes of the workers;
- d) Very frequently, the blind trust which the common people are accustomed to place in agitators who make a show of popular zeal and know how to govern all things according to their own discretion in assemblies of the people. How often does it happen that most are ignorant of the very reason why they refuse their labor!

4. THE EFFECTS. a) As regards the workers:

Immediately, through the suppression of the wage, work stoppages reduce not a few to want and greatly afflict their households; they induce idleness very dangerous to the virtue and morals of many; they sometimes cause a dearness of the things which the people themselves especially use, or injure the products of other businesses or trades.

Mediately, particular withdrawals, for the most part, come to nothing; some are conducted according to the workers' wishes. **Yet universally**, it does not seem possible to deny that they have benefited the temporal advantages of the order of workers not a little. For, since masters know that the workers are prepared to have recourse to these extremities, they have become more solicitous in arranging the business lest in any part they give place to a just complaint. **But in all of them**, whether they have turned out prosperously or otherwise, the anger and hatred by which men of slender means abhor the richer are sharpened, so that they are principal promoters of revolution.

b) As regards the masters:

Immediately, they diminish their profits and are accustomed to bring no slight damage upon their affairs;

Mediately, they move them to resentment and persuade them to form those contrary confederations—I mean the lockout—by which the disturbance of all affairs becomes worse; and they render their minds alien to the workers and to their institutions or associations. Indeed, if an opportunity is given, sometimes with their fortunes they seek another climate in which they may attend more securely to their affairs and businesses.

471. Economic judgment. Without hesitation, work stoppages must be numbered among evils, and indeed immense evils, since they divide citizens by hatred, corrupt religion and morals, induce calamities, and thus never fail to bring detriment to the commonwealth.

Therefore, wisely Leo XIII: “This kind of cessation from work afflicts not only the masters and the workmen themselves with loss, but obstructs commerce and the interests of the commonwealth; and since it is accustomed to be not far removed from violence and disturbances, it very often brings the public tranquility into danger.” Encyclical *Rerum novarum*.

Nevertheless, it can happen that the workers are able to provide for themselves by this one way.

472. Moral judgment. Because a good act proceeds from an integral cause, work stoppages are not therefore already to be judged licit merely because they are unjust neither from their end nor from their manner. Rather, just as theologians already said concerning wars and the just defense of oneself, it is required in addition that no other way appear to be available for attaining a sufficiently grave good¹ which is worthy of so great a price.

¹ Understand that either proximately or mediately. For it can happen that a cause not so grave in itself becomes of the greatest importance if, in a more general manner, it induces greater respect for the advantages of the workers. Nor must it be neglected what ends of the withdrawal are foreseen and what its duration will be, so that a just calculation of the damages may be made.

Therefore, it seems that the individual headings must now be discussed briefly.

473. From their end the following are illicit:

a) Work stoppages which are undertaken to disturb the state. Those who then, aware of that end, take part in them—unless some rationale of cooperation is excused by a graver evil—“sin by cooperation in the most grave sin of disturbed public tranquility.” Ballerini-Palmieri, *Opus morale [Moral Work]*, vol. 3, tr. 8, pt. 3, chap. 2, no. 536.

And, speaking universally, unless the demand is very equitable and the necessity of this means manifest, political strikes are to be blamed and accused of impiety toward the fatherland. For, on the one hand, they are accustomed to be greater and more grave; on the other, it is greatly opposed to the common good if laws and public institutions are amended by ways that are neither customary nor legitimate, but by the coercion of popular tumult.

b) Those which are undertaken to extort a wage beyond the just maximum, or any inequitable conditions. These are opposed to commutative justice.

Those, however, which are undertaken to obtain a greater but just wage, even perhaps the maximum, are not dishonorable under this heading. Therefore, Rev. Fr. Lehmkuhl, work cited, permits the workers to endeavor to stipulate for this wage: that the greatest part of the gain which is to be distributed from the joined powers of capital and labors should fall to the workers themselves. Likewise, it is lawful for the workers to be unwilling merely to hire out their labors and to demand that, with a certain just rationale of partnership having been introduced, they become in some manner associates and participants in the business. Nevertheless, it will be no less lawful for the masters, within the same limits, to contend for their own advantage.

474. From their manner, the following are contrary to commutative justice:

a) When, before the time established by a free agreement, the workers interrupt the labors promised, unless they do this to free themselves from unjust vexation as regards the price or the conditions of labor. For the rules concerning just defense must be transferred to this.

b) When unjust coercion of others is exercised. It is worth the labor to define this more precisely.

a) The coercion is unjust by which, through violence, fraud, threats, or strictly harmful means—which injure someone's person or goods—the other workers are prohibited from labor. For they have a right to exercise and hire out their powers at the price and in the manner which pleases them.

Nor can this coercion in any way be excused by some right of defense against those who, by assenting to harsh conditions, might be said to snatch from the others the sword by which alone they can protect themselves. For there is no right of defense unless there is an unjust aggressor whose present attack cannot otherwise be turned aside than by repelling force with force. But in the present case, those who work for an inequitable wage perhaps fail somewhat in charity; nevertheless, they are guilty of no injury, even in appearance. Much less can any present invasion of person or thing be imagined. Nor, because the way of obtaining what is equitable is thus indirectly closed to others, can these measures therefore become just, since that maxim is perpetual: one who uses his own right is injurious to no one.

Moreover, if the rationale proposed were true, merchants who sell their wares at too low a price would no less have to be condemned for injury, so that the other merchants, to whom this is unwelcome and hateful, could likewise claim the right of defense for exercising vengeance. Yet the common good does not permit there to be such frequent occasions of private vengeance. And in this present case nature could sanction such a thing all the less, the more even work stoppages rashly undertaken are regarded by the deceived populace as a most equitable vindication of a certain violated right. Therefore, unless we hold most firmly that others have a right to persevere in doing

their work, we shall expose each of the best workers, defenseless, to the caprice of a seditious faction or of agitators.

What of the fact that this opinion is almost repugnant to the decrees of the Holy See, which, in the most specious cases, denied the exception of defense to one who was compelled to accept a duel lest he lose his fortune or honor?² In a case nearer and more closely related to ours, in which, according to many, there was question of an inequitable oppression of tenants, the Congregation of the Holy Office condemned the measures, although not openly injurious, by which the Irish tenants wished to compel others, for the protection of their own rights, not to pay rents or lease lands. For the doubt was proposed: “Whether it is lawful, in controversies between lessors and lessees of farms or estates in Ireland, to use the means commonly called *the Plan of Campaign* and *the Boycotting*?” After the matter had been considered long and maturely by the Most Eminent Fathers, the response was given by unanimous vote: “Negative.” In the rationales appended, however, C. Monaco writes these words which pertain especially to our matter: “Finally, it is altogether alien to natural justice and Christian charity that, by a certain new persecution and interdiction, severity be exercised either against those who, content with those rents which they had agreed upon with the owners of the estates, are prepared rather to pay them; or against those who, using their right, lease vacant lands.” (From the letter of C. Monaco, April 20, 1888, by which the response of the Holy Office was sent to the Bishops of Ireland.)

² Cf. the propositions condemned by Benedict XIV, Bull *Detestabilem*, 1752.

Therefore, we can in no way assent to Rev. Dr. Pottier, who, diss. 3, no. 180, appears to call this matter into controversy. Moreover, this passage of his work also gave little satisfaction to those who reviewed it, for example in *Civiltà Cattolica* [*Catholic Civilization*] and *Science Catholique* [*Catholic Science*], 1900.

β) Nor is such coercion licit or free from injury by which someone is virtually forbidden water and fire, with all civil communication being denied. For the Irish used this kind of coercion in their *boycotting* and *plan of campaign*. For there seems to be a right of each person to enjoy that civil intercourse by which he can lead a human life.

c) But, these means having been excluded, it is lawful, in a just and grave cause, to employ a certain moral coercion by which those who are unwilling to protect the common interests are merely excluded from some undue good. To this pertains a fine established according to the laws of the association, expulsion from the association, denial of assistance in a necessity that is not extreme, and so forth.

N.B. Deservedly, Rev. Dr. Pottier, no. 176, binds the workers *in solidum* to repair the damages of an unjust work stoppage. Often, however, when there is question of restitution to be made to the master himself, once peace has been established, a certain remission of the debt can be presumed—at least of that by which the common people are bound. I would not say the same concerning the agitators.

475. From the effects of hatreds and ruins, work stoppages, even if just, are gravely opposed to charity and piety toward the fatherland:

- a) When the good for which hope is given is not of such great importance;
- b) When the suitability of such a means must deservedly be doubted;

c) When a gentler and better way of attaining the intended end is available.

476. Concerning the lockout, by which employers enter into contrary confederations not to hire workers except under a definite rule, the same must be said, but in the inverse rationale, as concerning work stoppages.

477. Concerning the legitimate intervention of public power.

1. No one doubts that it pertains to the commonwealth, according to its powers, to cut away the causes of work stoppages or to foster those institutions by which complaints and disagreements may be settled peacefully. Appositely the Holy Pontiff: "In this matter, that is more efficacious and salutary: by the authority of laws to forestall the evil and to prevent it from being able to break forth, its causes having been removed in due time." Encyclical *Rerum novarum*.

2. It is no less certain that the crimes and injuries which are accustomed to abound in these tumults are to be restrained by it.

3. From what was said in no. 475, it is also evident that every effort must be made so that the right of laboring be kept safe and sound, and consequently that a sufficiently free choice be permitted to those who are unwilling to take part in the work stoppage.

4. But if disturbances, tumults, and injuries proximately threaten from some withdrawal, the rulers' right to avert these evils, even by prohibiting the work stoppage, is manifest. "Therefore, let the authority of the commonwealth intervene," the Encyclical *Rerum novarum* admonishes, "and, a bridle having been put upon the agitators, let it restrain from the morals of the workmen the arts that corrupt them, and from lawful owners the danger of plunder."

5. But it is asked whether the agreements themselves concerning the refusal of labors can be prohibited by a general statute.

There are those who deny that this is lawful, for it is free to each person either to refuse or to hire out his labors. But this is not at issue at present; rather, it is whether the state, just as it renders many agreements made void, can also prohibit this kind of agreement because it is too dangerous to the common good, and fine those who are supporters of work stoppages.

To state openly what we think in this matter, it would appear to us scarcely equitable to deprive the workers of that defense unless another means is at the same time provided for them by which they can pursue their rights.

But if such a means is at hand, the ruler who judges it opportune to punish by laws these withdrawals, as *per se* harmful to the common good, will not exceed the measure;³ and without doubt he can condemn those which are undertaken before the controversy is brought for resolution before prudent arbiters. Perhaps these few words from the Encyclical *Rerum novarum* pertain to the matter: "This customary and grave disadvantage of work stoppages must be remedied publicly."

³ Thus, after the disturbance of France, for a sufficiently long time it was forbidden for workers to form associations to agree concerning the price and conditions of labor.

But, on the other hand, this too must be left to the judgment of the legislator: whether or not it is expedient to give guilds of workmen the power of declaring work stoppages, so that a certain necessity of obeying these decrees lies upon the members. For if associations of this kind are wisely

constituted, especially if they have a Christian character and cannot come under the power of a few turbulent men, then it appears that the commonwealth has less to fear from these decrees. Nevertheless, that the matter is not free from danger is sufficiently manifest of itself.

Question XI: On Equity

Aristotle, *Ethics*, bk. 5, chap. 10; St. Thomas, *On bk. 5 of the Ethics*, lect. XVI; I-II, q. 96, art. 6; II-II, qq. 80 and 120; Lessius, bk. 2, chap. 47, dub. 9.

Article I. Approach to the Disputation

478. Timeliness of the question. The disputation concerning the virtues joined to justice follows in order the consideration of justice properly so called. There are, moreover, two things from which it is evident how greatly it concerns us to acquire for ourselves a distinct notion of equity:

- a) The perpetual use which men are accustomed to make of the word *equity* in their affairs and controversies, although, if they are asked concerning the essence of equity and the proper force of the word, they generally remain in great doubt;
- b) The appeal to equity in the matter of the wage by those who, escaping by means of confused rationales the very thing under dispute, while they think that they have untied the knot, have been prevented by themselves from seeing the truth.

479. What the word equity signifies. As generally happens, no slight obscurity of the matter has arisen from the various things which are subjected to the same word. Therefore, it will be useful first to divide and explain these by words:

1. Sometimes equity signifies **natural justice**, insofar as, especially in former times, it was opposed to the civil law, which it supplied or corrected. Hence, at Rome, for example, the praetors gradually mitigated the harshness of the law through edicts derived from that equity; cases of strict right and of good faith were distinguished, and so forth. Equity thus understood produces rights and duties taken in the strictest sense, and does not demand a special inquiry, since it is the same as the genus of justice itself.
2. From this the word was transferred to designate that interpretation and observance of laws which follows the mind of the legislator against the words of the law and is more frequently called *epikeia*. And in this sense it was principally employed by the ancients and Scholastics. We shall discuss it in the scholium.
3. According to modern usage, **equity** is accustomed to designate a certain congruous moderation which, in one devoted to equity, expresses some remission of right and, in the one whom it benefits, a certain imperfect title to ask or expect this remission. Come then: the present question concerns the accurate explanation of equity in this sense.

480. Opinions. Since the Scholastics generally consider *epikeia* alone, and more recent authors are very meager in treating this argument, diverse opinions must not so much be overthrown as the mist must be dispelled, so that the occasion for appealing to equity inopportunely may be removed.

Article II. Formulation and Arguments of the Conclusion

THESIS XXXI

Equity is a special virtue, intermediate between justice and charity and a potential part of justice, by which the soul is inclined to the humane use of right.

481. I. State of the question. 1. THE INTENTION OF THE THESIS looks to this: that the thing subjected to the most customary word *equity* be proposed distinctly. We judge that we discharge this care when, by the formula set forth above, we call equity a **special virtue**, assign its place among the virtues, and at the same time declare its **formal moral goodness and subject**.

2. THE TERMS ARE EXPLAINED.

Equity, according to the usage which is more frequent today,

Is a special virtue, namely, in that manner in which justice is such (no. 26). For in the corollary we shall say that it consists of three species.

Intermediate between justice and charity, insofar as it is composed of the imperfect rationale of each and is placed between the two as a certain consummation of the former and beginning of the latter.

And of justice, I mean the cardinal virtue,

A *potential part*, which therefore, agreeing more with justice than with charity, nevertheless falls short of the rationale of justice, so that in dialectical order it is ascribed to justice as to the more principal virtue;

By which the soul, namely the will, in which faculty equity resides,

Is inclined: Here we undertake to describe the formal moral goodness of this virtue.

To the humane, that is, that which is worthy of man, after regard has been had to the terminus of right, who is another man: that man, I say, who is bound by the duty of justice.

Use of right: by these words we indicate at the same time that the subject of this virtue is man as **creditor**, not as **debtor**; that is, man insofar as he possesses rights, not insofar as he is bound by a debt of justice.

482. II. Proof. *Equity is a special virtue, intermediate between justice and charity and a potential part of justice, by which the soul is inclined to the humane use of right.*

The argumentation, since it concerns the genuine rationale of the word, is contained wholly in a dialectical analysis of common usage. It seems capable of being brought forth thus.

Equity is commonly understood:

a) **To be a certain mitigation of strict right, a softening of the summit of right, a moderate use;** or a certain prestation which, without a legal or conventional indication, is nevertheless highly congruous.

The Philosopher testifies to this at the end of bk. 5 of the *Ethics*, chap. 10, writing thus: "He who does not press the utmost right—his own—excessively (ἀκριβοδικαίως), nor toward the worse part, but rather yields something of his right, even though he could rely upon the aid of the law, is

equitable and good; and this habit is called equity.” The dictionaries testify to it: “This word sometimes signifies,” says the *Dictionary of the French Academy*, under *Équité*, “justice exercised not according to the rigor of the law but with a reasonable moderation and softening.” Freund, in the *Grand dictionnaire [Great Dictionary]*, renders the word thus: “A manner of acting that is upright, lawful, affable; equity, moderation ... which allows itself to be guided by the sense of duty, while *iustitia*, justice, grants only that which is owed according to the terms of the law.”

b) To pertain to the one who holds a right actively. Thus, the subject who omits the law by *epikeia* is not called equitable so much as the ruler or judge who, when opportune, does not exact a penalty, for example; and likewise he who of his own accord remits something of his right, as when the master of a business does not retain a great profit wholly for himself but communicates it to the workers.

c) To be akin to justice and charity. To justice: for where do men introduce discourse concerning equity except in defining rights and in declaring laws and agreements? Who appeals to equity except one who knows that, from the rigor of right, he will lose his case?—**To charity:** for it is celebrated as such a manner of using right that no one is offended, as a certain mitigation by which the prestation of a debt is rendered smoother, and thus an easy conjunction of minds is prepared.

d) Yet to be nearer justice than charity. For while charity rests upon a certain unity of persons and is prior toward oneself than toward other equals, someone acquires the praise of equity, on the contrary, not from the rationale of acting toward himself but from the manner in which he treats others. One who has recourse to the protection of equity judges that in himself there is a certain cause, or an almost juridical title, why something should be conceded or assigned to him. And, if we attend carefully to the matter, furnishing that which is equitable is said to be congruous because it appears fitted to the personality of another. Recall the most customary examples. A certain delay conceded to a debtor is called equitable when it does not harm the creditor but frees the debtor from great distress. What else is had here except a certain imperfect right of necessity? A certain sharing of extraordinary profit between the master and the worker is called equitable. Why, unless because there is in the worker a quasi-right to the fruits gathered from labor?

e) Nevertheless, to depart from the perfect rationale of justice. For justice renders a right. But one who appeals to equity confesses that right does not favor him. And all perceive that what is merely equitable is owed less than what is just.

But: These things show that our conclusion concerning the essence of equity is correct.

Therefore: The conclusion follows.

To the minor: From these things we have that, in common usage, equity is placed between justice and charity (c); that it is referred rather to justice, although it differs somewhat from it, so that it is a potential part of justice (d and e); and that through it the soul is inclined to the humane use of right (a and b).

It remains to demonstrate that it is a **special virtue**. And already the magnificent praises with which it is heaped are an unambiguous indication of a peculiar moral goodness. The same is briefly effected thus:

A special virtue is had where it is proved that there is a moral goodness which is **proper and joined with difficulty**. **But:** To use one's right in a manner which is congruous with the person of another and prepares friendship—what is more morally good and more consonant with the right order by which observance of persons is commanded and their society recommended? What is more morally good also—to prove the same thing under, as it were, another name—than to satisfy even the less perfect titles of some natural debt? Moreover, that this moral goodness is **proper to equity** is established by the fact that it pertains to the peculiar order by which a special matter—I mean the use of rights—is directed toward the right intercourse of men among themselves.—That a **difficulty to be overcome is not absent** is evident in two ways: both because it is a question of moderating the use of a right, that is, a faculty, which, because it is for our good, men are accustomed to abuse insolently; and because the prestation yields to the advantage of another, toward procuring which we are not so inclined, false self-love resisting.

483. III. Difficulties.

1. **EQUITY IS NOT A VIRTUE.** For no virtue is contrary to a virtue. **But:** Equity is contrary to justice, since it wills something to be taken away from the rights which justice protects. **Therefore.**

Reply. I deny the assertion. To its confirmation: I concede the major; I deny

the minor, and distinguish its rationale. Equity wills something to be taken away from rights, and so forth, **I deny;** it wills them to be exercised moderately and, at most, something of them to be remitted voluntarily, **I concede.**

That there is no contrariety is already evident from the disparity of the subjects. The subject of justice is the debtor; the subject of equity, the creditor. The latter, insofar as he presses his right, does not exercise the virtue of justice; nor, insofar as he remits something of his right, does he therefore observe justice less. The debtor, on the contrary, whose part it is to exercise justice, does not exercise the virtue of equity while he asks for a remission.

2. **IT IS NOT A SPECIAL VIRTUE.** For this is the manifest position of the Philosopher writing in bk. 5 of the *Ethics*, chap. 10: "Equity is a certain justice, not some other habit."

Reply. I deny the assertion and distinguish the rationale. The Philosopher there treats principally of *epikeia*, which in reality, as we shall see, is not separated from legal justice. But if you repeat the same thing, saying that the present rationale of equity is also touched upon, the reply is ready: equity is not another habit insofar as, at least as a potential part of justice, it is referred to no other virtue than justice.

3. **IT IS NOT A POTENTIAL PART OF JUSTICE. For:**

a) **It appears to pertain to friendship.** For it belongs to friends not to weigh their mutual rights strictly.

Reply. I distinguish the assertion. It appears to pertain to friendship taken broadly, which is a certain affability and a potential part of justice,¹ **I concede, or let it pass.**—To friendship taken strictly, **I deny.** Thus says St. Thomas, II-II, q. 80, ad 2.

¹ Concerning this, the Philosopher, bk. 4 of the *Ethics*, chap. 6.

And in very truth, although equity imitates friendship in certain things, it is nevertheless moved by another intention. For no special affection toward the person directs equity, since it is prepared to furnish the same things to all, known and unknown, in whom it discovers the imperfect title of which there was discourse.

b) It appears to be a part of temperance. For temperance imposes a measure upon appetite. But what else is discerned here except that some measure must be had in action and the appetite for one's own thing must be restrained?

Reply. I deny the assertion. I distinguish the rationale. Temperance imposes upon appetite a measure to be commensurated with the agent, **I concede**; to be commensurated with other men, **I deny**. For temperance orders man in himself. **I distinguish the minor conversely.** But here this measure is an accommodation of the action to the agent, **I deny**; of the action to others, **I concede**.

For the titles which are in them are regarded. Indeed, the very name of equity indicates equality and consequently two distinct supposits, since no one is made equal to himself.

Article III. Supplements to the Doctrine

I. COROLLARIES

484. There seem to be three species of equity. Just as we saw that right is threefold, to which three specifically distinct justices correspond, so there seem to be three moderations of right and equities. **The first, among private persons,** remits something of one's own right, so that one does not exact the debts of commutative justice beyond what is fitting. **The second, likewise among private persons,** permits without envy a distribution of common goods to be made not strictly equal, on account of some common advantage or on account of some private rationale of a person which it is fitting to observe. **The third, finally, in the community itself,** is exercised by those who act on its behalf, when they suitably temper the severity of the laws lest they be excessive in exacting the law or punishment. Yet this moderate exaction, because it pertains at the same time to the right rationale of discharging one's office, establishes in the magistrate a duty of commutative justice. That is, from commutative justice, by which they are bound toward society, the judge and the ruler ought to enforce the laws with congruous moderation.

485. Concerning the middle order which equity safeguards. Besides those things which are so joined with the good of the human person that they participate in its inviolability and constitute its rights strictly so called, there are other things which, on the one hand, are highly congruous with the person but, on the other, cannot be strictly exacted by him without greater detriment to the common good and the intercourse of men, which is the higher end toward which rights and duties are directed. Therefore, an inviolable faculty of doing or exacting those things is not conceded by nature; indeed, nature sanctions the contrary right of omitting those things, the use of which right remains valid, even if perhaps illicit. Yet if they are furnished, the matter is not one merely of grace and friendship, since there is a title in the other as such. Now, equity procures this middle order.

This fuller declaration of the province of equity appears to us at the same time to confirm the conclusion. For we could suspect this: that between those things which are owed strictly to others and those which are owed to them in no way, there are many things which are owed imperfectly from

a certain beginning and adumbration of right, so that one comes by definite grades from justice to charity; and that there is a virtue which tends toward this moral goodness. Come then: this is the special praise of equity.

486. Other definitions or rationales of equity. Equity could no less rightly be defined: *a more perfect justice which adjusts the use of rights to the imperfect titles and, as it were, inchoate rights which are in another.* Indeed, this definition excels the former in that it is more consonant with the force proper to the word *equity*, which expresses a certain equality. Nevertheless, we did not give it in the conclusion, so that the conclusion would agree more with the common rationale by which equity is set forth as a certain quasi-temperance of one's own right.

It is also not inaptly called, with Andronicus, praised by St. Thomas, q. 80, ad 4, *voluntary justification*. Most elegant is this description of St. Cyprian: *Justice tempered by the sweetness of mercy.* Nor does the Abbot Panormitanus¹ badly add this other, speaking of a judge: *Equity is a certain restraint and a certain temperament which for a cause departs from the common rules of right.* Or, to hear John Andreas, it is “A reasonable measure containing mercy and rigor.” Therefore, it can also be regarded as the *proper temperance of the one possessing a right.*

¹ In chap. *Ex parte tua* 11, *De transactionibus* (l. 35), where, in no. 6, he adduces from John Andreas the passage of St. Cyprian.

487. The obligation of equity. The obligation of equity, since it is intermediate between the rigorous debt of justice and the spontaneous prestation of charity:

1. Does not induce a debt of restitution toward the one who complains that equity has been violated in his regard. For no right of his has been injured.

2. Nor, by its genus, does it oblige under grave sin. For if at any time the ease of the prestation and the notable disadvantage of one's neighbor give place to a grave offense against equity, the mortal guilt must be derived from the addition of violated charity.

Understand these things insofar as concerns the proper rationale of equity. For we saw (no. 484) that a magistrate who enforces a law against equity derogates from those things which he owes the state from commutative justice.

This is confirmed by St. Thomas, who, while he refers our rationale of equity to friendship, adds at the same time that it “has little of the rationale of a debt.” Cf. II–II, q. 80, sole article, corpus, ad 2 and ad 3.

You will perhaps wonder that only a light obligation is induced by a virtue which is placed between two virtues to which a grave necessity is of itself joined. But it is between the two in such a way that it participates in the attenuated rationale of both. For insofar as it is referred to justice, it is less, by its genus, to set aside a beginning of right than a perfect right. Compared with charity, however, the excessive rigor by which equity is violated does not proceed from an intention formally contrary to charity—I mean from some hatred of one's neighbor—but rather from an excessive affection for one's own right. Moreover, the remission of this right, since it is *per se* disadvantageous, has the appearance of an excuse which often removes the obligation of charity; for charity does not *per se* oblige with grave disadvantage. Add, finally, that these higher rationales are grasped with greater difficulty by many; and this obscurity also diminishes the guilt.

488. Comparison of equity and affability. Although St. Thomas, q. 80, ad 3, appears incidentally to refer our rationale of equity to affability, nevertheless we cannot make these two one. For affability, by which it comes about that in his conversation a man, as though by a middle habit between flattery and moroseness, approves in others only those things which are to be approved and avoids the useless offense of others, regards no title which is in another, but merely the moral goodness which shines forth of itself in this accommodation of manners to truth and merits. Cf. Aristotle, bk. 4 of the *Ethics*, chap. 6, and St. Thomas, on this book, lect. XIV.

489. What equity is invoked in the Encyclical *Rerum novarum*. This appears to us to be, at least sometimes, natural justice itself, as when it is said: “These things ... concern the proletarian: to render ... that which was freely and equitably agreed upon for labor.... This stands foremost: to furnish to each his just due. Indeed, in order that the measure of the wage may be established from equity, several causes must be considered.... Equity therefore commands that care for the proletarian be undertaken publicly.... It is equitable to permit to each his own faculty of acting.” (Pp. 20, 22, 38, 40 of the Desclée edition.)

II. SCHOLIA

490. The excellence of equity. The excellence of this virtue appears both from the higher prudence by which it is directed and from the spontaneous movement which it has. For it is observed with no human law commanding and no strict right compelling.

491. Concerning the saying, “The utmost right is the utmost injury.” a) That saying is most true when contrary positive right is opposed to the equity which was called natural justice. b) It is also true of a spurious interpretation of the law which rejects *epikeia*. c) It can be transferred only in a diminished sense to the violation of equity properly so called. For it cannot happen that the omission of an imperfect debt should become the utmost injury.

492. Concerning *epikeia*. 1. *Epikeia*, which formerly was called equity moderating the observance of the words of the law (II–II, q. 120, art. 2, ad 3), recommends such an interpretation of human law as, though contrary to the words of the law, is nevertheless plainly consonant with the mind of the legislator.

2. **Its cause is** not some defect of human law but its generality, which is adapted to most cases, yet in a few can fail in such a way that verbal observance becomes useless, indeed evil.

3. **It does not concern the natural law.** For this is not prescribed by those universal formulas by which, for our utility, we are accustomed to express it—“You shall not commit homicide,” and so forth—and which, like positive sanctions themselves, fail in certain particular circumstances. Rather, it is the very dictate of reason which, after all things have been weighed, must be delivered concerning individual actions. (Cf. Suarez, *De legibus* [*On Laws*], bk. 2, chap. 16.)

4. **Its right use is:** a) **Necessary**, if the law in a particular case becomes inequitable or more burdensome than is just. Then it would be evil to follow the positive law against common right. b) **Merely licit**, when it is prudently inferred that the legislator did not wish to oblige in some case. This is principally gathered from usage or the manner in which the law is commonly understood.

5. That interpretation is made according to higher principles by attending to the very ends of the law. Therefore, indications of this kind pertain to the part of prudence which is called *gnome*.

Deservedly, Lessius observes that the prudence which is required for *epikeia* is lacking in many, whether on account of the scruples by which it comes about that they are too greatly struck by the very words of the law, or on account of the weakness of their judgment.

6. Because legal justice, adequately considered, would not be a virtue unless it commanded such observance of the law as attended sufficiently to the very mind of the legislator, it is evident that *the habit of epikeia is in reality the same as that justice* whose nature and office we described at the beginning.

Question XII: On Gratitude, or a Grateful Mind

Aristotle, *Ethics*, bk. 9, chap. 7; Seneca, *De beneficiis* [*On Benefits*]; St. Thomas, II–II, qq. 106 and 107; Lessius, bk. 2, chap. 47, doubts 1, 2, 3.

Article I. Notions

493. Why we write about gratitude. We are induced by a twofold reason to discuss a few things concerning this virtue: both because the peculiar equality of so highly praised a habit is recognized not without utility, especially since the proper rationale of justice itself appears capable of being illustrated by comparison with a cognate matter; and because, after the opinion of the moderns who contended that duties are exchanged in agreements had been refuted, it was necessary to indicate what nobler recompense was congruous with the innate dignity of a human act.

494. What a benefit is. *A benefit is an unowed and useful prestation, freely made to someone from an affection of benevolence.*

Unowed: whence Seneca, bk. 3 of *On Benefits*, chap. 21: “As long as that which is customarily exacted from servants is furnished, it is service; when there is more than is necessary from a servant, it is a benefit.”

Useful: whence “one who assists another in sinning does not confer a benefit but rather harm.” St. Thomas, q. 107, art. 1, ad 1, who wisely adds: “And therefore thanksgiving is not owed to him, except perhaps on account of his good will, if he was deceived when he believed that he was assisting toward good and assisted toward sin.”

Freely made from benevolence, whence the name *gratitude* was given. “For it is *gratia* because it is given freely.” St. Thomas, q. 106, art. 2, corpus. “It matters greatly whether someone gives us a benefit for his own sake, or for ours, or for his own and ours.” Seneca, bk. 6, chap. 12, who deservedly warns in chap. 13 that gratitude is owed if someone should sometimes have wished to provide for himself and for me. “If he considered both, I am ungrateful, not merely unjust, unless I rejoice that what benefited me also profited him.”

Sometimes *benefit* designates more broadly whatever has been usefully furnished, although its repayment is owed from commutative justice or pertains to that improper rationale of friendship which is called useful and does not require a love of benevolence, but some communion of cause and advantage. St. Thomas, II–II, q. 106, art. 5, corpus.

Nor is the name *benefit* transferred to this genus undeservedly. For one who is conscious that he devotes useful labor to another, although bound by a promise, is to be presumed to be moved somewhat by benevolence also. Therefore, we judged it equitable that some mutual gratitude be returned by workers and masters from the faithful prestation of those things which are embraced in the letting and hiring of labors.

495. Concerning material and formal ingratitude. He is **materially ungrateful** who, forgetful or careless of a benefit, is not moved by reason of it to discharge gratitude or to abstain from pursuits which oppose the beneficent man. He is **formally ungrateful**, however, who does not wish to appear

obligated by the benefit and therefore contemns the benefit or the mind of the benefactor, for example, by an unfavorable interpretation of the benefit. Cf. Lessius, place cited, nos. 15, 17.

Article II. Formulation and Arguments of the Conclusion

THESIS XXXII

Gratitude is a virtue connected with justice, which brings the will of him who has been moved by a benefit into equality with the affection of the benefactor.

Formal ingratitude, but not material ingratitude—at least not immediately—is a mortal sin by its genus.

496. **I. State of the question.** 1. **THE INTENTION OF THE THESIS** looks to this: that the essence of the virtue of gratitude and the guilt of the contrary vice be declared. We shall endeavor to accomplish this briefly in two parts.

2. THE TERMS ARE EXPLAINED.

Gratitude, or the habit by which, a benefit having been received, the soul is inclined to return the favor,

Is a virtue: We therefore call that propensity laudable, in which there inheres a necessity of moral goodness, not one that is merely indifferent;

Connected with justice, so that it is a potential part of justice;

Which brings into equality: Here, therefore, we find that equality which is the proper mark of justice;

With the affection, I mean of benevolence. Therefore, unlike justice, it does not regard effects, but principally the mind, the will which is manifested by effects;

Of the author, that is, of him who conferred the benefit;

The will, or affection,

Of him who has been moved by a benefit, or of him toward whom the affection of the author of the benefit was directed. For the effect sometimes has another material terminus, as when for the sake of another we receive someone kindly or attend him with gifts.

Formal ingratitude, or that which contains contempt for the benefit;

But not material ingratitude, which is the mere omission of this debt;

At least not immediately. We add this because, since we do not deny that beneficence induces a closer proximity which establishes a stricter debt of charity, grave of itself, so a grave obligation can arise mediately from a benefit received;

Is a mortal sin by its genus. Nevertheless, from the imperfection of the act—by which name we understand also the smallness of the matter—it becomes venial. That, on the contrary, which is venial by its genus does not become grave except from another species superadded.

3. OPINIONS. Here again it is a question less of resolving a controversy than of resolving an ambiguity. What we say concerning guilt is confirmed by the authority of Lessius.¹

¹ Cf. *On Sins*, in the first volume.

II. PROOF

497. A. OF THE FIRST PART.

1. Gratitude is a virtue.

The special moral goodness of this habit is already proved by the most evident testimonies of common sense, by which a grateful mind is treated with praise, while the ungrateful man is so blamed that there is no one who does not strive with every effort to repel this reproach from himself. And from the very wisdom which is accustomed to inhere in words, he to whom a favor has been done is said to be *bound, obligated by a benefit*.

The same appears directly:

- a) Because gratitude joins friendships, than which nothing is more desirable to nature;
- b) Because it observes the special proximity by which an effect is necessarily joined and coupled with a cause.

That an effect is referred to its cause by a special relation is most manifest. Come then: one who is affected by a benefit, in a qualified respect—that is, as regards that knowledge of the intellect, good movement of the will, or joy which is in him from the beneficent man—is compared with the latter as an effect with its cause.

- c) Because the cause of some material effect rightly and deservedly calls it its own. Thus we saw that the fruit of labor pertains to him by whose proper powers it was produced. Indeed, one who has received a benefit, since he is a person, cannot properly be possessed by another. Yet because he has experienced in himself the good action of another, he must in a nobler manner—I mean by an affectionate and pious inclination of soul—acknowledge that he has something from the other and is in some manner the other's. Therefore, gratitude participates in the moral goodness of piety toward parents.

Thus we appear to have explained the brief argument of St. Thomas, II-II, q. 106, art. 3, corpus: “Every effect naturally turns toward its cause. For it is always necessary that an effect be ordered toward the end of the agent.² But it is manifest that a benefactor, insofar as he is such, is the cause of the one benefited. And therefore the natural order requires that he who has received a benefit be turned toward the benefactor through the recompense of gratitude, according to the manner of each.”

² For the effect is something of the agent. But the agent, as such, is wholly for the sake of the end—the good—of the agent.

2. It is connected with justice.

For it is at once referred to justice, since it satisfies a title which is in another, and falls short of the perfect rationale of justice, because a benefit is a liberal prestation from which a right cannot flow. For one who wished to acquire for himself a right to an equivalent price sells or exchanges; he is not a benefactor. But if he wished merely to conciliate the will of another for himself, this will is not numbered among the things to which a right of commutative justice can be held.

3. It brings the will of him who is bound by a benefit into equality with the affection of the author.

For an equality of affections, not of effects, is intended:

a) The consent of the doctors³ and common sense itself testify to this. In estimating the benefit itself, men are already accustomed to attend principally to the will of the giver; but after the benefit they say that mutual gratitude and benevolence are owed;

³ Thus Seneca, bk. 1 of *On Benefits*, chap. 6: "A benefit does not consist in that which is done or given, but in the very mind of the giver or doer"; and Cicero, *On Duties*, bk. 1, chap. 15: "Choices must be made among benefits received, and first of all it must be weighed with what zeal and benevolence each one acted."

b) The distinction between gratitude and justice proves it: for if thing were compared with thing, that arithmetical equality which is the property of commutative justice would be intended (no. 68);

c) It is no less apparent from the fact that the means or opportunity to render an equal thing is very frequently lacking, as when the debtor of gratitude is poor but the author has need of nothing; yet a virtue does not formally rest upon those things which *per se* cannot be done or are not expedient;

d) It is also established by this rationale: that the repayment of gratitude is owed to a benefit insofar as it is praiseworthy. Come then: as such, a benefit consists materially in the effect but formally and principally in the will. For there is question of a benefit strictly so called, which is done not in view of some advantage to be received but freely, or from an affection of benevolence. Therefore, the greater the affection has been, the greater the praise of which the benefit will be worthy. Cf. St. Thomas, q. 106, art. 5, corpus and ad 1; Lessius, no. 6.

498. B. OF THE OTHER PART.

1. Formal ingratitude is a mortal sin by its genus.

a) **It is a mortal sin.** For of itself it induces grave offense against one's neighbor. As Lessius notes, no. 16, charity is injured more by contempt for the benevolent affection of the benefactor and by an unfavorable interpretation of the benefit than by a rash judgment, which is contained, moreover, in these things.

b) **By its genus.** For there are various degrees in contempt itself, and from the contempt of a small benefit an occasion of grave offense does not appear to be given *per se*. Lessius, in the same place.

2. Material ingratitude is not, at least immediately, mortal by its genus.

For mere negligence or forgetfulness does not of itself have a movement contrary to charity, nor does it *per se* bring grave distress upon one who has deserved well. Nevertheless, it can happen that his want produces an obligation of assisting which becomes grave from the proximity itself. The refusal of assistance will then be a grave omission of the duties of charity, whose weight will also be estimated from the debt of a grateful mind. Therefore, we said that material ingratitude is only immediately light. Cf. Lessius, no. 18.

499. III. Difficulties. (Cf. more in St. Thomas at this place.)

1. GRATITUDE IS NOT A SPECIAL VIRTUE. For the congruous repayment of a thing received pertains to commutative justice.

Reply. Repayment which is intended directly and principally by the virtue, which is made according to the necessity of right and is accommodated to the quantity of the thing received, **I concede**; that which is intended secondarily, which is not exacted by right and must be measured by affection, **I deny**.

Repayment, as was said, is not the one or principal mode by which someone proves himself grateful. Otherwise, a poor man would be excused from the debt of returning gratitude. The remaining things are clear from the notions handed down.

I insist. But: The very thanksgivings to be rendered and the very acknowledgment of the benefit pertain to commutative justice.

Reply. I deny, because the formal rationale of a debt of commutative justice—a strict right of the other—is lacking.

Concerning this difficulty, cf. St. Thomas, q. 106, art. 1, ad 2; art. 3, ad 5; art. 5, ad 2; q. 107, art. 1, ad 2.

2. IT APPEARS THAT A BENEFIT MUST BE REPAID ACCORDING TO THE EFFECT RATHER THAN THE AFFECTION. For:

a) Repayment is owed to the benefit. **But:** The benefit consists in the effect. **Therefore.** (St. Thomas, q. 106, art. 5, ad 1.)

Reply. I concede the major. I distinguish the minor. It consists in the effect materially, **I concede**; formally and principally, **I deny**. For that which was given is not strictly a benefit except insofar as it is informed by a benevolent will.

b) Repayment cannot be made according to the affection, since the interior affection is hidden from man. St. Thomas, in the same place, ad 3.

Reply. I distinguish the minor. The interior affection is hidden from man *per se*, but it is manifested through many signs, as are, in the present case, a prompt and cheerful mind, obstacles overcome in rendering the benefit, and other circumstances which accompany the deed. Indeed, lest you oppose to this position that a benefit which was greater in reality commonly appears to require repayment with greater praise and affection, observe that a greater gift contains of itself a greater affection. For the rest, it is not denied that the importance of the thing furnished must also be considered. Cf. the corollary, no. 503.

3. EVERY INGRATITUDE, EVEN IF MERELY MATERIAL, IS A MORTAL SIN. For every ingratitude is repugnant to charity. Cf. St. Thomas, q. 107, art. 3, ad 2.

Reply. I deny. To the rationale, I distinguish. Insofar as it is beyond charity and excludes some act of charity, **I concede**; insofar as it is properly contrary to charity and destroys the very habit of charity, **I deny**.

Article III. Supplements to the Doctrine

I. COROLLARIES

500. The threefold duty of a grateful mind.¹ Although gratitude formally intends some equality of wills, nevertheless it embraces three duties: “The first is that a man acknowledge the benefit received; the second is that he praise and give thanks; the third is that he repay according to place and time, in accordance with his means.” St. Thomas, II–II, q. 107, art. 2, corpus. For the acknowledgment of a benefit is, as it were, the beginning and necessary principle of benevolence itself; praises and opportune repayment are its natural effects.

¹ Lessius, no. 17, speaks more explicitly concerning these duties, which he distributes into five.

But repayment is no longer opportune unless it is made at its proper time. In this matter, one can sin both by delay and by haste itself. For, as Seneca warns, work cited, bk. 4, chap. 11: “He who hastens to repay does not have the mind of a grateful man, but of a debtor.” This is to be reproved: “For he does not seem to esteem that which is principal in a benefit, namely, the gratuitous mind of the benefactor; for he pays just as if the latter had given, not gratuitously, but with a view to compensation.” Lessius, no. 7. Then, while he strives immediately to cast off this obligation, he seems to owe unwillingly, “and he who owes unwillingly is ungrateful.” Seneca, in the same place. On this matter, cf. St. Thomas, q. 106, art. 4.

501. The measure of the duties. a) **Concerning the formal measure**, we have already spoken. St. Thomas presents it thus: “Just as in justice, which is a cardinal virtue, the equality of things is considered, so in gratitude the equality of wills is considered.” St. Thomas, II–II, q. 106, art. 6, ad 3.

b) But, from the same rationale—that the person obligated strives to repay his benefactor in return with an equal will—St. Thomas declares concerning the **material measure** that one ought to be so disposed that one is more ready to furnish than one has received. For one who repays to equality seems to discharge a debt. But the will of the beneficent man was this: to do something to which he was held by no obligation. St. Thomas, q. 106, art. 6; Lessius, no. 8.

Modern interpreters of the laws have perceived this very little; for, while they understand a **remuneratory donation** to be only that by which a service worthy of a wage is repaid to equality, they seem to pervert its rationale, so that it is now nothing but a certain wage concerning which there was no agreement by express compact. Compare what is said by Molina, disp. 292, and by Baudry-Lacantinerie, *Précis de droit civil*, vol. 2, no. 252.

But if you should object that in this way a process to infinity is introduced, since repayment would thus be a new benefit to be requited by new gratitude, accept that response wholly worthy of the great soul of the Angelic Doctor: “The debt of gratitude is derived from charity, which, the more it is discharged, the more it is owed, according to that saying (Rom. 13): *Owe no man anything, except that you love one another*. And therefore it is not unfitting if the obligation of gratitude is interminable.” St. Thomas, II–II, q. 106, art. 6, ad 2.

502. The debt is not removed by a concession of the author of the benefit. Although a benefit is governed by this, as it were, higher law, which Seneca elegantly rendered thus, work cited, bk. 2, chap. 10, at the end: “This is the law of a benefit between two persons: the one ought immediately to forget what was given, the other never to forget what was received,” nevertheless the debt of

gratitude in some manner binds more strongly than an obligation of strict justice. For the latter is removed by a cession of the right, while no renunciation² suppresses a debt which does not regard a right.

² Nevertheless, understand this when no contrary affection has been assumed. For when the will has changed, or hatred has been conceived, the author of the benefit himself seems, as it were, to rescind the benefit. Cf. Seneca, bk. 3, chap. 13.

The most, therefore, that the author of a benefit can do is to free the person obligated from a certain material prestation which formal gratitude would otherwise command to be made.

503. The debt of gratitude follows the conferral of the benefit, not a merely beneficent intention. Although gratitude is sometimes rendered merely affectively, its debt does not arise except from a benefit actually received. For until someone has actually conferred a benefit, he does not have the character of a principle with respect to another,³ which character is the cause of the obligation. Cf. the proof. Therefore, we said that in the estimation of a benefit the very importance of the gift cannot be disregarded.

³ To this pertains the beautiful inquiry which the Philosopher institutes in bk. 9, chap. 7 of the *Ethics*, concerning this question: why we are borne with a more vehement affection of love toward those of whom we have deserved well than toward those from whom we have received benefits.

504. Concerning ingratitude. I. In omission, three rationales of it appear, since there is a threefold positive duty of gratitude: not to acknowledge the benefit, not to give thanks, not to repay according to the means afforded.⁴

⁴ Observe that, since that which is last in generation is first in resolution, these degrees of ingratitude are arranged in such an order that the first is not to repay a benefit; the second, to dissemble by not giving thanks; the third, to refuse to acknowledge it. Lessius, no. 17, and St. Thomas, II-II, q. 107, art. 2, corpus.

Three degrees of ingratitude which consist **in commission** are also enumerated, and indeed in this order: *To repay evils for good things*, the gravity of which must be estimated from the importance of the matter (St. Thomas, place cited); *To disparage the benefit*; *To reckon the benefit in place of an evil deed*. These latter two modes pertain now rather to formal ingratitude. Lessius, place cited.

II. SCHOLIA

505. Whether it is lawful to decline a benefit.

Not only after a benefit has been accepted does the rule of moral rectitude demand a grateful mind, but we also seem unable rashly to decline a benefit offered with sincere intention, in order thus to escape the obligation itself. For “the debt of gratitude is derived from the debt of love.... Whence, that someone owes this debt unwillingly seems to proceed from a defect of love toward him who gave” (or offers) “the benefit.” St. Thomas, II-II, q. 107, art. 1, ad 3. How true these things are is confirmed by daily experience. For men often declare that they wish to owe nothing to someone whom they hate. Therefore Lessius, no. 5, places benign acceptance among the duties of gratitude.

506. Concerning gratitude to be rendered to God, parents, and superiors, for the benefits by which we are affected by them, you will more correctly, with St. Thomas, assign it to the very virtues of religion, piety, and observance, as moving us to satisfy every rationale of debt by which we are bound toward God, parents, and superiors. For, according to the opinion of the Holy Doctor, religion

eminently contains piety, observance or *dulia*, and gratitude; piety is at once observance and gratitude in an excellent manner; finally, observance virtually contains gratitude; and gratitude formally becomes a special virtue only when it is not, as it were, a part of any higher office. Cf. St. Thomas, q. 106, art. 1. Lessius, however, rather—but less well—assigns our grateful mind toward God, parents, and superiors to the special virtue of gratitude. Cf. Lessius, place cited, nos. 2-4.

Parergon: The Remaining Virtues Connected with Justice

Aristotle, *Ethics*, bk. 4; St. Thomas, *On bk. 4 of the Ethics*; II-II, q. 80; qq. 108-114; qq. 117-119; Lessius, bk. 2, chap. 47, doubts 4-8.

507. Concerning their division. The account of the virtue of justice will be somewhat completed if, following St. Thomas, we speak briefly of the remaining virtues which are referred to it as potential parts. We have already seen in no. 28 how they can be ordered dialectically.

From the notion handed down there, it is apparent that they can conveniently be divided into two classes.

For some, which we said differ from justice because of the mode in which they render a debt, contain a **legal debt**, that is, one which is also urged, or can be urged, by human law. Furthermore, the virtues which regard a debt of this kind—that is, religion, piety, and observance—are more fittingly discussed in the first volume, where the fourth precept of the Decalogue is treated.

Others possess only a **moral debt**, or one which is required by the moral rectitude of virtue but does not fall under civil law. This debt in turn consists of two degrees. If the first is neglected, moral rectitude cannot be preserved: such are the debt of truthfulness and of gratitude, and the fitting mode of vengeance or vindication. The other contributes rather to greater moral rectitude and usually is not necessary by reason of any precept. I say *usually*, for there is no virtue some act of which cannot be commanded.¹ These virtues are liberality, affability, and friendship, to which St. Thomas refers equity as we have chiefly considered it.

¹ Cf. Gregory of Valencia, *Theological Commentaries*, vol. 3, disp. 5, q. 26, point 2.

508. Concerning vindication. 1. After gratitude, vindication is next in order, since it occupies the opposite side. For the one strives for the requital of a good work, the other of an evil work. Often it is not a special virtue, as was said in no. 25. But insofar as it is a special virtue and a potential part of justice, it gives form to the mind of a private person for seeking, in a legitimate manner, fitting penalties from him by whom he was unjustly injured; and this indeed with the intention of making himself free either from a past injury, through satisfaction and reparation of the injury, or from a future one, since punishment is accustomed to restrain wrongdoers. Cf. St. Thomas, II-II, q. 80, sole article, corpus and ad 1; q. 108, art. 2, corpus and ad 1.

In a legitimate manner, I say, that is, generally (except for small vindications carried out immediately), not by private authority, but by having recourse to a superior and with due moderation.

To make himself free. Thus is indicated the moral rectitude of the end which he pursues.

For if it is done for some higher rationale, for example, for a public cause, the act must be referred to another virtue; but if someone intends it reduplicatively as directed toward another's evil, it will be

an illicit act of hatred.

But insofar as you exercise vindication in this manner to obtain your own good, it is not contrary to reason; nevertheless, vindication acquires the name and praise of virtue from the fact that it perfects the natural inclination by which we are borne toward vengeance (St. Thomas, place cited, art. 2, corpus and ad 3), that is, insofar as it observes the due circumstances of mode and measure. Lessius, no. 26.

2. The moral rectitude preserved in exacting vengeance is therefore its **formal object**. Hence it is to be numbered among the virtues which pursue a moral debt.

3. But because the praise of that virtue is small, and, moreover, the matter is exposed to many dangers, in a private cause the forgiveness of injury according to the evangelical counsel is for the most part rather to be advised. Lessius, no. 27.

4. Cruelty sins against this virtue by excess; excessive remissness in punishing, by defect.

509. Concerning truthfulness. This virtue “procures that in speech, writing, gestures, and other signs by which we intend to signify something... there be conformity and agreement between tongue and mind, between external signs and internal conscience.” Lessius, no. 29.

It is a (potential) part of justice insofar as it regards our manner of acting toward another and makes signs adequate to the things signified. St. Thomas, q. 109, art. 3, corpus. It discharges a moral debt. This is discussed in the first volume.

510. Concerning affability. 1. Affability is the virtue by which “a man is fittingly ordered toward other men in common intercourse, both in deeds and in words, so that he conducts himself toward each one according as is becoming.” St. Thomas, q. 114, art. 1, corpus. From this it follows that a man “conducts himself neither too blandly nor too harshly in encounters,”² but is pleasant in company.

² Lessius, place cited, no. 47.

Because it exhibits signs of that common friendship which joins all men to one another, it is sometimes called **friendship**.

Lessius restricts its matter to **serious things**, for “that our intercourse may be pleasant in jests, another virtue provides, which Aristotle, bk. 4 of the *Ethics*, chap. 9, calls *eutrapelia*, which makes us use jests and amusements becomingly... so that we neither exceed the measure in them as buffoons, nor shrink from them as certain rustics and boors.” Lessius, place cited, no. 47.

It does not have the full rationale of a debt. St. Thomas, q. 114, art. 2; q. 80, sole article.

2. Nevertheless, two vices are contrarily opposed to it:

a) Flattery, namely, by which someone strives excessively to please others in company. Yet more strictly he is called a flatterer who approves and praises all things for the sake of his own advantage.

b) Moroseness or quarrelsomeness, on the contrary, sins by defect. The morose and harsh “are difficult everywhere, contradictors everywhere, and accommodate themselves nowhere.” Lessius, no. 51.

511. Concerning liberality. 1. “Liberality is the virtue which moderates the love of money and renders us ready and prompt to spend it when reason dictates.” Lessius, place cited, no. 54.

Its **material, immediate, and proximate object** is the desire for money, upon which it bears so as to impose a mode upon it; this mode is its **formal object**. Consequently, it regards the expenditure of money, which it makes willingly, cheerfully, and abundantly, according as the rationale of becomingness in civil life demands that it be done. Lessius, no. 57. Now *money* here designates riches of every kind. Since such an expenditure is not strictly owed but pertains to the greater moral rectitude of virtue, liberality is said to possess the least of the rationale of debt. St. Thomas, II-II, q. 80, sole article, corpus; q. 117, art. 5, ad 1.

2. To liberality are opposed **avarice**, which, exceeding in the estimation and love of money, is excessive in acquiring or retaining money (Lessius, no. 59); and **prodigality or profusion**, which is deficient in preserving wealth and excessive in bestowing it, by giving to those to whom one ought not, or more than one ought.

Question XIII: The Right and Place of Women in the State

Taparelli, *Saggio teoretico di dritto naturale*, vol. 2, nos. 1550-1554; Fénelon, *De l'éducation des Filles*; Cornut, *À propos du Congrès féministe* (*Études*, 1896, vol. 68); Burnichon, *Féminisme* (*Études*, vol. 90; vol. 92); Dr. Koch, *Die Frage der Frauen-Emancipation* (*Theologische Quartalschrift*, Tübingen, 1897); Cathrein, *Die Frauenfrage*; Turgeon, *Le Féminisme français*; S. Deploige, *L'Émancipation des Femmes*¹ (*Revue néo-scolastique*, 1902); Defroidmont, *Contre le Suffrage des Femmes* (*Revue sociale catholique*, 1902); A. Castelein, *Droit naturel*, thesis 16, p. 540 ff.; Brunetière, *Les deux Féminismes* (*La Femme Contemporaine*,² 1904); by several authors, *Condition de la Femme* (it contains various studies which appeared in the Parisian periodical *Réforme sociale* in the years 1901 and 1902).

¹ By this study the work of J. Stuart Mill is attacked.

² This periodical is constantly and usefully occupied with questions of this kind.

The cause of feminism properly so called is defended by:

John Stuart Mill, *The Subjection of Woman*; Bebel, *Die Frau*; L. Frank, *Essai sur la condition politique de la femme*; Spalding, *L'éducation supérieure des femmes*; Cesse de Villermont, *Le mouvement féministe*; Cyr. Van Overbergh, *Le suffrage parlementaire des femmes* (*Revue sociale catholique*, 1902).

Article I. Initial Presentation of the Question

512. Notions of feminism. In a broader usage, any defense of women can be referred to "feminism," whatever is undertaken to promote their religion, virtue, knowledge, liberty, social esteem, or economic condition.

Properly, this word designates the recent efforts of all those who judge that men and women ought to be made more equal. For women, as they think, enjoy a right that is too inferior, whether you regard the **domestic order**, where the wife is seen to be in the power of her husband, who rules her person, manages the goods at his own discretion, and violates the marriage covenant with greater impunity; or the **social and economic order**, where a woman is prohibited from several arts, especially the liberal arts; or the **political order**, in which she has no access to the commonwealth even through suffrage.

Some, as is customary, defend what they call the **emancipation of women** more completely than others, whether they advocate only economic emancipation, or political emancipation also, or finally domestic emancipation, so that the defenders of a certain absolute feminism contemplate removing the very institution of marriage from their midst as the first root or cause of the inequality they hate. Among these the socialists are prominent, for example Bebel in his work *Die Frau*.

Thus feminism is distinguished as **absolute** and **moderate**; feminism as **political** and **domestic**; feminism as **Christian**, and feminism as **impious**, which equally contemns morals and religion.

513. Historical outline. Aristophanes¹ derided a commonwealth governed by women, while Aristotle reproved it, reckoning it equally evil for women to be placed over the commonwealth, or for those placed over the commonwealth to govern it at the pleasure of women.² Lactantius³ declares Plato truly the author of a certain feminism and at the same time reproves him in these words:

“Indeed, he also reserved the senate-house for women and permitted them military service, magistracies, and commands. How great will be the unhappiness of that city in which women occupy the offices of men!”

¹ Ἐκκλησιάζουσαι (*Women in Assembly*).

² *Politics*, bk. 2, chap. 7 (On the Lacedaemonian commonwealth).

³ *Epitome of the Divine Institutes*, chap. 33 (elsewhere 38), no. 5.

The European nations did not wholly reject in the Christian age this political kind of feminism, which was unknown to the pagan commonwealth of the Romans.⁴ For women, by a certain right of the corporate body to which they belonged, or, if noble by birth, by hereditary succession—at least where male descendants were lacking—obtained some part in the commonwealth either through their vote or through feudal administration.

⁴ Cato inveighs vehemently against the juridical emancipation of women in Livy, XXXIV.2.

Modern feminism, however, seems to have arisen in the United States of North America, since women began to contend for the right of suffrage at the Philadelphia congress in 1787, and in the State of Massachusetts, in 1850, the first assembly was gathered to promote the political emancipation of women.

In England, J. Stuart Mill undertook to defend the cause of feminism, both by forming a society to vindicate suffrage for women and especially by the celebrated little work *The Subjection of Woman*, which he wrote in 1869.

From there feminism began to pervade various nations, though with unequal fortune and character, so that in France it is especially mingled with impiety; in several regions it has impelled women to pursue higher studies;⁵ it has made them legally fit to cultivate several arts,⁶ and almost everywhere it has obtained milder civil rights for women. In a few nations, for example, in South Australia, they are also adorned with political suffrage;⁷ in several they can participate in local administrations. Such is the case in England.

⁵ In America and Russia, separate universities are now assigned to the education of women. Thus, since 1885, at Bryn Mawr, near Philadelphia, there has been a university which in 1900 numbered 50 professors and about 400 female students.

⁶ Thus the medical art and the forensic art, especially in America.

⁷ Concerning political suffrage, cf. the study of D. Duthoit in *Réforme sociale*, October 16, 1901, p. 560 ff.

In Belgium, by the laws of 1900, greater disposition over their own wages was granted to wives; and their money deposited in a savings bank is more protected from a husband's dissipation.⁸ Already before this, by the law of April 10, 1890, women had been permitted to acquire academic degrees and to practice medicine, but not to plead cases at the bar.

⁸ Cf. Vermeersch, *Manuel social*, pp. 241 and 298.

To promote the affairs of feminism, however, not a few books are written, periodicals are published, and especially congresses are held periodically. Thus the most recent congress in Germany (June 1904) was held in the name of 7,000,000 women.

514. The causes why the right and place of women are now disputed with such great contention, besides the multitude of persons whose lot is at issue, are:

1. **Changed economic conditions and customs**, so that many more women attempt, and are obliged, to provide for themselves by their own occupation.

Thus in Belgium, in 1896, the women who were engaged in laborious occupations, agriculture excepted, numbered 264,999; in agriculture, in 1895, there were 515,914, of whom 58,829 had hired out their labor; those assigned to other occupations in 1890 exceeded 600,000 in number.⁹

⁹ *Recensement général (agriculture) de 1895; Recensement général des industries et des métiers*, October 31, 1896 (vol. 18), and the study of D. Julin, *Réforme sociale*, September 16, 1901, p. 381 ff., and *Annuaire statistique de la Belgique*, 1903.

About 600,000 women were engaged in various occupations of middle-class citizens (*emplois de la classe moyenne*); of these more than 325,000 had exceeded the age of 25 years and were not joined in marriage.

In Belgium, however, 3,422,403 women were counted in 1901.¹⁰

¹⁰ *Annuaire statistique de la Belgique*, 1903.

At the international congress of women which was held at Berlin in June of this year, 1904, 25 percent of the women of Germany—that is, 3,578,851—were found to provide themselves with sustenance by working.

Article II. Formulation and Arguments of the Conclusion

THESIS XXXIII

I. Although, with the exception of domestic society, the general equality of men and women is not excluded by any absolute or perpetual reason,

II. Nevertheless, the confusion of the kinds of life, or the access of women to public affairs, are neither things to be desired per se, nor to be hoped for according to some law of progress, nor likely to profit women themselves in living well and happily.

III. Nevertheless, there is a place today for prudent feminism.

515. **I. State of the question. 1. THE INTENTION OF THE THESIS.** While some, lovers of innovations and rash patrons of a new justice which consists entirely in arithmetical¹ equality, say that every separation of the sexes must be overturned fundamentally together with the rest of the present order, others, on the contrary, strive for the absolute exclusion of women from public affairs and from several offices. We prepare to speak more moderately and temperately concerning the same cause, so that, although little disposed in mind toward the public action of women and the exercise of certain arts by them, we nevertheless reject these things less strictly, and do not deny that, provided you preserve intact some authority of the husband, they must be undertaken in certain circumstances or can even, at least in part, be expedient.

¹ Cf. no. 68.

In this manner we propose the first two parts as the more polemical. For there is hardly anyone who would be unwilling to add his vote to the third.

2. THE TERMS ARE SET FORTH.

Although, with the exception of domestic society. By these words we wholly reprove that feminism which would have it that even in domestic society the man is not the head of the woman; that is, we posit some essential right of marital authority, although its character can vary and be very benign.

By any absolute or perpetual reason. An **absolute** reason would be one which, without any regard for circumstances, or in any circumstances whatever, would prove equality to be evil; a **perpetual** reason, one which would avail for all time.

Is not excluded, as something in no way to be tolerated. We are not speaking strictly about its opportuneness.

Of men and women. By women we mean principally,² but not solely, those who are not joined to a man.

² Stuart Mill himself, work cited, p. 244, grants access to political offices only to unmarried women.

General equality. We say **general** rather than **universal**. For it seems that women can be excluded more absolutely from the exercise of certain arts, for example, the military art.

Nevertheless, the confusion of the kinds of life, that is, by which all the arts and conditions of life which now fall to men alone or women alone would be held promiscuously by all. I say **all**, because we do not deny that, according to circumstances and customs, several things formerly separated can be made common.

Or the access of women to public affairs, whether they could also seek honors or merely cast a political vote.

Are neither things to be desired per se. That is, we deny that by their nature, or for the most part, they are things to be desired.

Nor to be hoped for according to some law of progress. For not a few are deceived by a false image of culture evolving itself, as though this equality pertained to a more humane and more perfect constitution of society.

Nor likely per se to profit women themselves in living well and happily. Therefore, the cause of the “feminists” is not always to be embraced in order that provision may be made for the good and happy life of women. Nor will you be a truer defender of women in proportion as you are more of a feminist. We again understand this to be said *per se*.

Nevertheless, prudent feminism has its proper place, that is, the effort by which one applies oneself to the protection and defense of women, provided that one proceeds cautiously and circumspectly.

Today. That is, this effort is neither useless nor inopportune at present. For the laws and customs are not of such a kind that they cannot be changed for the better, and we can prepare a more perfect condition for women.

II. PROOF

516. A. OF THE FIRST PART.

1. The perfect equality of the two sexes is absolutely repugnant in domestic society.

For by the natural law itself the man is ordained the head of the family. And in truth:

a) **It is necessary that there be some domestic government.** For the things which certain men say or write concerning a universal government of reason, by which all those matters now placed in the judgment of a superior could be defined, pertain to the dreams of anarchism; and they vanish from this consideration alone: that reason itself leaves several things in the middle as uncertain, doubtful, or indifferent. These matters must either be decided by the authority of one commanding, or they can have no resolution unless one willingly yields to the other. Thus, with the right of one suppressed, in place of him to whom the right belongs there will usually succeed, not the better, but the more stubborn!

b) **The government must be constituted within the confines of the household.** Otherwise, the matter would have to be assigned to a judge, as indeed a few have thought.³ But this must be wholly denied, both because, if the proper power which it needs were taken away, domestic society itself would perish and would not be sufficient unto itself *per se* in its own order of private affairs; and because appeal to a judge would be most frequent unless one spouse, endowed with a gentler disposition, yielded to the other, though not without that bitter sadness which an undue concession is accustomed to produce. But the frequent intervention of an outside person in domestic and intimate matters would be most repugnant to domestic peace and happiness.

³ Laurent, *Principes de droit civil*, vol. 3, pp. 112-115; René Colaert and René Henry, *La Femme-Électeur*.

c) **Which, then, of the two spouses will preside?** Is it not he who is perceived to have been chosen by nature, who *per se* excels in strength, exercises the parts of the agent and the dominant one in the very function of generation, and is constantly seen to be more free for work—that is, the man—while the woman is greatly impeded for a long time, for example, after childbirth and during nursing? Or perhaps did most wise nature rightly make inferior the one whom she gave greater strength, so that in this manner the temptation to injury would *per se* be more vehement and there would be more abundant room for inequity?⁴ Or did she leave the matter to the greater part of the votes, when a domestic assembly can consist of only two?

⁴ Observe that the right of the superior is indicated by stronger powers *per se*, lest these greater powers have been given by a futile design.

Nor should you say that it sometimes happens that the woman is superior in virtue, ability, and strength itself. For since no one can decide government in individual cases, it was necessary that by a general decree of nature the right of commanding be attributed to the one who was perceived to be more fit *per se*. For it was more important to the common good of men that there be a universal determination, although *per accidens* this could be less congruous with a few families, than that the matter be left confused and disordered. Add also that, where the man is less skilled, it often happens that the reins of governing are graciously handed over to the woman by a man who is content with the name and title.

2. For the rest, the general equality of men and women is not excluded by any absolute or perpetual reason.

By what absolute or perpetual reason would you think to reprove equality, unless you establish that this equality is either physically impeded by the incapacity of women or morally conflicts with an essential office of women?

The adversaries contend this in vain. For:

a) **In qualities of intellect**, women are proved at most to be somewhat inferior to men *per se*, yet not to be so distant from men that they are incapable *per se* and that there are no contrary exceptions. But where, as in the conferral of offices, there is an opportunity to make a selection of persons, even the accidental fitness of someone is not to be excluded *per se*.

b) **No office of women can be opposed except the matrimonial office**. But besides the fact that very many women abstain from marriage, domestic obedience is not so great that it cannot strictly be combined with the fulfillment of an office or even with a certain public power.

Nor is any case adduced in which feminists cannot refute the absolute conclusion by the examples themselves. For they will either bring forward women who excelled in letters, sciences, and constancy of soul, and well exercised those offices from which you would wish to bar all women; or, if you transfer the discussion to the commonwealth, they will show forth great queens or empresses.

And add that the dissimilarity of the female and male intellect is not undeservedly attributed, at least in part, to dissimilar education and customs.

517. B. OF THE SECOND PART.

1. **The confusion of the kinds of life, or the access of women to the commonwealth, are not things to be desired *per se*.**

N.B. After what we have just written, no one will wonder that the arguments to follow cannot contain such force that the position of the adversaries is convicted of manifest absurdity, especially if, as often happens, it is attenuated in some manner and the discussion is instituted merely, for example, concerning the right of political suffrage.

But two things are especially to be maintained in this place.

a) The commonwealth is not to be accommodated to every arrangement which can strictly be tolerated, but to that which sound principles and experience demonstrate to be safer and better.

b) As soon as a certain kind of affairs is proved to be foreign to women, all participation in that kind is to be denied to them *per se*, even that which, taken separately, may seem to be attended by fewer inconveniences. To say it in other words: no step is to be made on a bad road, although we do not go headlong in one step. Yet one step is understood already to prepare an approach to the remaining and worse things.

By this reasoning, furthermore, we fortify the conclusion beforehand:

a) All who have inquired into human customs are witnesses that men and women are accustomed to differ so in **disposition** that the male and female disposition can each be described by its own marks. By these marks the man is said to be broader in intellect, stronger in soul, more constant in counsel, harder in heart, freer in body, more elevated by desire and pride; while the woman, on the contrary, excels in grace and in the force of affections, is more solicitous about particular matters with a rather narrower intellect, is more changeable in soul, less restrained in tongue, is compelled to serve more on account of her own needs or those of her offspring because of the slender body which she uses, and is shown by flatteries to be vain rather than proud.

Differences of this kind, which are constantly observed, **a) Are to be presumed to have proceeded from nature**, so that they cannot be derived wholly from customs or education.⁵ **b) They are proved to be natural** because they are consonant with the domestic place of women⁶ and with the physiological office by which they are destined to give particular care to infants, which requires patience and an abundance of affections.

⁵ Especially since you can scarcely appeal here to a certain ancestral tradition. For sons and daughters are born from one mother. By what mysterious fate would the artificial disposition of the father be implanted only in the sons, but that of the mother only in the daughters? That is at least scarcely probable. "Who knows whether, through a change of regime, we shall not succeed in making everything equal between the two sexes? Who knows whether woman cannot be rendered as vigorous, as agile, as capable of science as man!... It is as though you were saying: who knows whether the oak is not in the process of becoming a reed, the dove a hedgehog, and conversely." Thus Proudhon himself, *La Pornocratie*, p. 145, quoted by Defroidmont, work cited.

⁶ Xenophon already elegantly described the domestic province of wives, *Oeconomicus*, chap. 3 at the end and chap. 7.

b) But if you enumerate the kinds of life, several seem to demand a masculine disposition and a person who can give himself wholly to them without bodily impediment; and they are often such that someone is withdrawn *per se* from domestic cares by them. Of this kind certainly are the public functions themselves. Add that, if political rights are also conceded to women, it will easily happen that the man and the woman follow contrary parties, which, since political pursuits are accustomed to be full of heat, creates no slight danger to domestic peace. But if for this reason you exclude wives, by this diminution of status you will render marriages less desirable, unless perhaps women, by such disregard for the right and by a slight desire, are shown to be more fitted for private affairs.

Hence the argument is made thus:

It is not to be desired *per se* that the kinds of life be mingled without regard for aptitude, or that women be called away from the domestic province; while, on the contrary, laws and institutions ought to strive toward this: that each person actually obtain in the state the place for which he is more fitted.

And this must be carefully noted: even if the natural or artificial origin could be disputed, the commonwealth must be adapted to persons such as we have, nor is it lawful to turn everything upside down in order that unexplored ways may be attempted.

Exclusion from the commonwealth is also confirmed by this rationale: political equality seems less fitting with the lower place which a woman ought to hold at home.

2. Nor are they to be hoped for according to some law of progress.

For insofar as offices become more confused, a way is entered rather contrary to this law of progress, according to which provinces ought to be distinguished more and more in accordance with varied aptitude. Will you say that it pertains to progress that a greater equality of persons be introduced? But only that equality which imitates nature is to be ascribed to the genus of progress. Yet nature has varied the disposition of man and woman, so that the one can more fully complete and perfect the other.

3. Nor will they profit women themselves in living well and happily.

a) **Not in living well.** For who denies that, under present customs and modesty, by which she remains more within and at home, a woman is greatly assisted in cultivating virtue? Who denies that many dangers will await women in public administrations? Who denies—to add a brief word about present opportuneness—that, since religion itself is accustomed to be contested today, it will happen that women, if they obtain suffrage, will be solicited by every art to lay aside religion and piety?

b) **Nor in living happily.** Omitting the fact that happiness is not purchased at the cost of virtue, to what will this feminine ambition lead? The peaceful and honored course of private life, where she is protected by a certain sacredness of weakness and is exempt from troublesome labors, where she enjoys no slight authority of persuasion—this course, I say, she will exchange *per se* for a fierce contest in which, endowed with unequal gifts of body and intellect, she will possess equal rights scarcely without futility. And through the contest itself she will be deprived of the benefit of the reverence which one who is weaker is accustomed to procure for herself by her modesty. But this most wretched condition of most women, which would prevail in full force if perfect equality were introduced, already seems in some manner to be prepared by every participation in the commonwealth.

What of the fact that the very diversity of pursuits is proved to contribute to the happiness of domestic life?

518. C. OF THE THIRD PART. Nevertheless, prudent feminism has its proper place.

No one will deny that it can easily happen that the weaker sex suffers certain unjust things, and that the laws themselves are less consonant with new circumstances. But besides this, it is established today:

a) **In the order of workers,** that a woman is to be withdrawn from excessive labor and has assumed too many of the parts of men in factories, so that she is said to have to be restored to the family.

b) **In the ordering of domestic government,** too free a discretion over common goods has been permitted to the man; and, with the circumstances of laborious occupations neglected, the woman herself has often had too little power over her own earnings.

c) As not a few seem to judge correctly, by the excessive indulgence of the laws an adulterous husband is permitted to go unpunished.

For the rest, the more recent laws themselves, by which the utility of women has been provided for opportunely, demonstrate the opportuneness of a wise feminism. We gave several examples at the beginning.⁷

⁷ For a comparison of the rationales of the Civil Code of France and of that which was drawn up for Germany a few years ago, see *Réforme sociale*, July 16 and November 16, 1901. The studies were written by Crétinon and Saleilles.

519. III. **Difficulties.** Most of them have been cut off, whether by the preceding conclusions of this book, by the arguments made, or by the very moderate manner in which the thesis was proposed.

1. If, for example, they argue from the fact that **it happens that a wife is superior to her husband in merit and ability**, it has been shown that this accidental superiority cannot change the law and that another means of employing that superiority is supplied by mutual affection.

2. If the supporters of an absolute conclusion rely upon **diversity of disposition**, they accomplish nothing against us unless they prove that it is so great that the woman appears unfit.

3. But if feminists contend at least that **the male and female arts are not to be indicated by laws**, we deliberately deferred this question to a scholion, so that it can be passed over in this place.

4. **CONCERNING POLITICAL SUFFRAGE**, an objection can be made to our position thus:

Universal suffrage cannot be granted unless, consequently, women are to be summoned to the voting assemblies.

Reply. I distinguish the assertion: Universal suffrage prudently granted for a public cause, **I deny**; universal suffrage which rests upon a certain feigned right of individuals, **I concede**.

If political suffrage belonged to every man by an innate right, it would certainly belong to women also, since it is indubitable that they are numbered within the human race. But the rationale of suffrage which is founded merely upon the presumed ability of all and was therefore introduced so that a better commonwealth could be hoped for, in no way demands that women be presumed equally fit or, even if they are thought capable, that they be adorned with this suffrage in the face of private and public inconvenience. Cf. nos. 88, 89, 94.

I insist. The interests of women, which are often different from those of men, ought to be represented in Parliament.

Reply. a) Nor is it generally true that the interests of women and men are contrary *per se*, since rather the one sex completes the other, so that it is in the common interest for both to conduct life well. On the contrary, men also enjoy the proper earnings and advantages of women. The earnings, for example, of a wife who is permitted to retain property of her own will profit the whole family, including its male part. The adversaries, therefore, were renewing the error of the socialists concerning the struggle between men and classes.

b) Even without a vote of their own, the considerations of women are represented in Parliament, both because of the very great influence which they are accustomed to exercise over their husbands,⁸ and because of the diligent care which many who will be blinded by no contrary interest will exercise with a view to the common good. Thus, for example, when the defect of a law was demonstrated in Belgium by which a lazy and prodigal husband was permitted to spend upon himself what his wife had gathered by praiseworthy thrift, although its correction seemed repugnant to the interests of husbands, nevertheless the correction of that defect was seen to be truly popular.⁹

⁸ Aristotle already observes that among the Lacedaemonians, for example, many things were transacted by the rulers of the commonwealth at the judgment of women.

⁹ Cf. Vermeersch, *Manuel social*, p. 240.

I insist. Women are as capable as very many men.

Reply. What follows from this, if the inconveniences recited stand in the way of suffrage?

5. Finally, **THE DEFECTS OF THE PENAL CODE** we readily concede, at least in part; nor can this difficulty, by which the third part of the thesis is confirmed, be objected against us.

Article III. Supplements to the Doctrine

I. COROLLARIES

520. The education of children ought not, as certain imprudent innovators contend, to be one and the same for both sexes; but rather, if we wish to provide for culture and progress, it will be different for each, so that it may be adapted to the special disposition of each sex.

521. That rationale of plural suffrage by which two or three votes fall to the father of a family and husband, while an unmarried man has only one *per se*, is *per se* very commendable. For in truth the father of a family sustains not only his own person but also that of his wife and children, and his vote is presumed to be *per se* the fruit of a deliberation common between himself and his wife. But if the man and woman are often separated by a diversity of sentiments in matters of greater importance, then we shall admit that the rationale of this vote perishes; and a second vote ought rather to be attributed to the wife, unless other reasons prove that it must generally be denied to her.

Observe also that the rationales of a double or triple vote can benefit an unmarried man, such as greater skill and the very virtue which, for example, is proved by the choice of a more perfect state.

522. Political suffrage is certainly less repugnant for unmarried women. Yet they too are touched by the argument.

II. SCHOLIA

523. God distinguished the two sexes by a moderate, not excessive, difference, so that, if occasion required it, the one could be supplied by the other. This happens more often in the private order, as when one of the parents is lacking; more rarely in the commonwealth.

Nevertheless, in order that the peaceful possession of the kingdom might be continued more certainly, it was not rarely introduced that queens could reign.

Apart from this peculiar cause of the common good, you will scarcely find another on account of which women should in a general manner be called to participate in the commonwealth even by suffrage. This could perhaps happen if a spurious rationale of universal suffrage had been introduced either by wicked force or by imprudent counsel, and every hope of a well-administered commonwealth had to be placed in the suffrage of the better sex. Nevertheless, even then the probable inconveniences of the suffrage of women can by no means be neglected.

But where suffrage has already been granted to women, it will often be better to sustain such an institution and to procure its wise use than to wish by an imprudent effort to correct an error which has gained strength in customs.

524. Municipal suffrage seems capable of being granted more usefully to women. For by municipal administration matters more private are determined; and in several matters, for example, in the education of children, which are accustomed to be ordered by municipalities, women themselves possess great authority, with nature herself as its author. Therefore, in England, the councils by which schools are governed are composed also by the votes of women (*School Board*).

Women are also less to be excluded from assemblies which deliberate concerning laborious occupations, especially since women are often already accustomed to exercise an occupation

separately from men.

525. Is the distinction of occupations to be made by laws or permitted to customs? It is apparent that customs have much force in this matter, since several offices are seen to exclude women for reasons which are not immutable. Therefore, if anything seems to have to be established, only those things which are plainly proved certain are to be defined by laws, prudently and very cautiously.

Nor does this seem to be denied: that proletarian women have been permitted occupations most foreign to their sex, while by a stricter law more cultivated women were prohibited from several liberal arts.

To state what is to be held as desirable: **a)** Women ought *per se* to abstain from every occupation by which they are kept from marriage or from the diligent care of children. Of this kind are those which demand a great preparation of the intellect. **b)** On the contrary, those occupations are to be desired which can be exercised at home, and especially those by which they can be of assistance to a husband who is working. **c)** But if the husband himself supplies sustenance for his wife, this will contribute in no slight degree to conducting domestic affairs prosperously and happily. For then, from a grateful mind the affection of love and reverence grows in the wife; love grows in the man, who will consider something more his own in the quiet and happy life of his wife.

526. Is an inquiry concerning the uncertain father of a child to be introduced? Among the offenses which are customarily objected against present laws, this one is often adduced: that they have prohibited, as they say, the inquiry into and proof of paternity. Unless someone confesses in a special form that he is the father of an illegitimate child, he will never be regarded as the father or experience a father's burdens. It is easily established that this is sometimes not without grave odiousness. At the same time, however, the rationale of that prohibition is not to be so disregarded—a prohibition which looked to this, that a scandalous matter difficult of proof should rather be covered by a veil—it is not, I say, to be so disregarded that a forensic action and proof are permitted always and by every means. But the matter seems to have to be restricted to certain especially odious cases, and to those provisions or modes by which useless scandals and calumnies are cut off.

527. In Sacred Scripture, St. Paul pronounces the man the head of the woman in domestic society,¹ and adds rationales which seem to be perpetual. For he sees the authority of the man foreshadowed in the very origin by which the woman is from the man, not the man from the woman, and confirmed by the union of Christ and the Church. But apart from that, with which our first position accords, nothing certain can be had from Scripture, which, if it discloses the snares and dangers of the feminine mind, at the same time extols wise women with praises.²

¹ Cf. 1 Cor. 11; Eph. 5.

² Thus it is said in Eccles. 25:17: "Every malice is the malice of a woman"; but in 26:19: "Grace upon grace is a holy and modest woman."

And altogether, especially today, that rash use of Sacred Scripture must be avoided by which, from statements uttered for an entirely different end, support is sought to confirm private persuasions. I would say that this is theological imprudence rather than knowledge.

528. The Catholic Church has deserved exceedingly well of the female sex. For evidence of this fact, it suffices to recall the same supernatural dignity of all, handed down by her, by which in Christ there is neither male nor female;³ the inviolable sanctity of marriage, by which the body of the man has been made the woman's by surrender, just as the man is said to possess the woman's body,⁴ and by mutual reverence each ought to reproduce the image of Christ and the Church;⁵ the praises and honors of the martyrs, which were common to both sexes; the public praises granted to virgins by the Holy Fathers and their distinct place in the churches; but especially the cult of the Immaculate Virgin, whom, a woman, with Christ excepted, the Church professes to be the eternal queen of all men and angels.

³ Gal. 3:28.

⁴ 1 Cor. 7:3-4.

⁵ Eph. 5.

Nevertheless, since canon law is less favorable to feminism, there are not lacking among feminists those who accuse the Church of having been hostile to women. Indeed, they do not hesitate to confirm falsehood by unjust calumnies. Thus, in the work of D. Frank, whether this is to be attributed to gross ignorance or to an impious mind, we detect multiple kinds of fallacies. a) For either facts are adulterated, as when a bishop is adduced as though at the First Council of Mâcon (Mâcon, 581) he had doubted the rational soul of women, when he considered merely the use of the word *homo* to be ambiguous—whether it was proper to the masculine sex or common to both.⁶ b) Or wise precautions are distorted, even by exaggerating them in words, by which the Church wished not to decree something contrary to women, but to protect the chastity and reputation of priests and bishops. Thus the decrees by which cohabitation is prohibited, not indeed between a priest and every woman, but between a priest and a woman who is suspect.⁷ c) Or those things which favor women are passed over in silence, so that those which seem to oppose them alone are brought to light. Thus a passage is adduced from question 5 of Cause XXXIII of the Decree of Gratian in which, from St. Augustine, the obedience of women is confirmed by this rationale: that woman was not made in the image of the Creator;⁸ but what is established in the same chapter concerning the inviolable right of women is omitted, so that, against their will, their husbands can in no way enter religion. What of the fact that the very honor paid to virginity, by which the female sex has been especially honored, is presented as ignominious to women? Cf. *Essai sur la condition politique de la femme*, pp. 40-43.

⁶ This is easily established by one who reads the very passage of St. Gregory of Tours which the writer cites (*History of the Franks*, bk. 8, chap. 20): "There arose in this synod a certain one of the bishops who said that a woman could not be called *homo* [a human being]. But after accepting a rationale from the bishops, he became silent." What rationale? That by which the use of the word was shown from the Scriptures to be common. But that the soul of women was considered doubtful may not be suspected from any word.

⁷ For it is most well known that by the universal law of the Church only this cohabitation is prohibited. But if the decree of the Council of Metz (888), canon 3, sounds more severe, this is a particular law, the rationale of which was nevertheless rendered in these words: "That they may lead an angelic life." What follows from this against the female sex? Moreover, it seemed good to the writer whom we attack to exaggerate the words themselves. Thus, in canon 1 of the First Council of Mâcon (581), bishops, priests, and deacons are commanded "to flee the depravity of deeds and the reproaches of slanderers... so that blameworthy familiarity with unrelated women may be avoided by them, and they are to dwell only with a grandmother, mother, sister, or niece, if necessity requires it." See how these things are now rendered in French by D. Frank: "The council ordered priests to flee their society (that of women), even that of their female relatives; it forbade bishops, priests, and deacons to live under the same roof as women, and permitted them to

remain with their grandmother, their mother, their sisters, or their nieces only in case of absolute necessity.” Cf. work cited, pp. 40-42.

⁸ But in what manner was it denied that woman is in the image of God? Not as though destitute of a nature similar to that of man, or excluded from the same end, but because, since she was made from man, she lacks the dignity of a first principle. Let Augustine be heard—and indeed in that very place from which the occasion for the accusation was taken: “This image of God is in man: that one was made as lord from whom the others should arise, possessing the dominion of God as though his vicar, because every king has the image of God; and therefore woman was not made in the image of God.”

Question XIV: On the Moral Person that is the State

Overview of the Question

529. Opportuneness of the question. From the very beginning of this volume (no. 7), we spoke of a moral person, which, alongside physical persons, we proposed as constituted by a community, and which we said was the terminus of legal justice (no. 21), but the subject of distributive justice (no. 26). Nevertheless, we did not unfold a distinct notion of such a person, but merely adapted our words to the customary manner of speaking. Today, however, a keen controversy rages concerning its rationale. We are therefore moved equally by a desire to complete what was disputed before and not to neglect the present question, so that we may endeavor to treat this argument clearly.

And because, in present-day arguments concerning justice, the province of the State itself often comes into controversy, we also judged it worthwhile to explore the nature of the State summarily, so that it might more readily become known what parts public power may deservedly claim as its own.

530. Order of treatment. It is immediately evident that our proposal is composed, as it were, of two parts: the one, more general, concerning the nature of moral persons in general; the other, more particular, concerning the State alone.

Chapter I: On the Moral Person in General

Pothier, *Traité des Personnes et des choses*; von Savigny, *System des heutigen römischen Rechts*, vol. 2, chap. 2, §85 ff.; Brinz, *Lehrbuch der Pandekten*, pt. 2, sect. 2; Ihering, *Der Geist des römischen Rechts*; Taparelli, *Saggio teoretico di dritto naturale*, vol. 1, nos. 432, 433, 441, 650-652 and note LVI; Vouriot, *De la propriété des biens ecclésiastiques en France et en Belgique*, chap. 1; W. Serment, *Associations et corporations*, pt. 1, chap. 1; M. Vauthier, *Études sur les Personnes morales dans le droit romain et dans le droit français*; J. Van den Heuvel, *La liberté d'association et la Personnalité civile*, pt. 2; Most Illustrious D. Waffelaert, *Étude de théologie morale sur l'obligation en conscience des lois civiles. Applications. 1re série. Les Personnes. II. Les Personnes morales* (*Nouvelle Revue Théologique*, 1884, p. 624 ff.); *De Iustitia*, vol. 1, nos. 160-168; Scheys, *De iure Ecclesiae acquirendi et possidendi bona temporalia*; Moulart, *L'Église et l'État, ou les deux Puissances*, bk. 3, chap. 8; J. Van Biervliet, *De la Nature des Personnes civiles*; P. Van Wetter, *Cours élémentaire de droit romain*, vol. 2, nos. 39, 54-57; Staedtler, *Cours de droit romain*, vol. 1, p. 282 ff.; de Vareilles-Sommières, *Les Personnes Morales*.

Article I. On the Historical and Present State of the Controversy

531. Origin of the division. The division so solemnly made today, by which persons are distinguished as physical and moral, occurs neither in Roman law nor in canon law, although it is once read in Roman law: “An inheritance¹ performs the function of a person, just as a municipality, a decuria, and a partnership do.”² In the seventeenth century, the French jurist Domat (1625-1695) spoke in a similar manner of legitimately established communities,³ and Pothier, the most celebrated of all those versed in French law, called colleges “intellectual beings, intellectual persons”;⁴

nevertheless, neither divided persons into physical and moral. But when the French upheaval was raging, so that public seizures of goods might be excused, Thouret⁵ began to distinguish between men and colleges, as though the latter, contrary to the former, had to derive all being and right from the human legislator and acknowledge them as received from him. This distinction could have been the occasion for the juridical doctrine which, prepared by Mühlenbruch,⁶ was expressed scientifically by von Savigny (1779-1861); and, because of the great name of this writer, it was soon introduced into France by Zachariae,⁷ and thereafter prevailed almost everywhere at least in this respect: that two genera of persons, physical and moral, were recognized. Only very recently was this formally confirmed by laws, especially by the Codes of Spain and Germany.

¹ The inheritance is to be understood as lying, that is, as not yet entered upon by the heir—approximately what one would call in French *succession ouverte* [an opened succession].

² Law 22, Digest, *De fideiussoribus* [On Sureties] (XLVI, 1).

³ “Legitimately established communities take the place of persons.” (Ed. of 1735), vol. 2, pp. 104-105.

⁴ *Traité des Personnes*, nos. 210-212.

⁵ Speech to the Constituent Assembly. See *Moniteur Universel*, 1789, nos. 77, 80, 81, cited by Van den Heuvel, work cited, p. 77.

⁶ Cf. Vauthier, work cited, p. 271.

⁷ *Cours de droit civil français*.

532. Opinions. Moreover, it is readily evident that physical persons are men themselves by reason of the innate dignity of nature—unless perhaps they have been reduced to perfect servitude, so that their personality is ignored civilly.

Concerning a moral person, however, authors think in diverse ways, whether you regard the nature of the person called moral, the subjects to which the appellation falls, or the predicates of such a person.

1. Concerning the nature of a moral person:

a) Until almost our own days, most jurists, with von Savigny, contended that a moral person was truly created by a fiction of law: for, on account of the convenience and utility of men, the legislator established that the goods and rights which regard corporate bodies of persons or things should no longer be attributed to the members themselves, or physical persons, but to a certain fictitious entity, in whose name they would be exercised by delegated persons.

Although they had asserted that these things could be feigned by the legislator alone, they were gradually led to admit that it could also happen that, through the fraud of private persons and against the will of the legislator, moral persons would arise which would then exist in fact, not by right. Liberal jurists greatly abused this accusation against religious persons.

It was necessary, moreover—unless, with Laurent,⁸ you ascribe the personality of the State to law, which is nevertheless posterior to the State itself—to attribute a higher origin to at least two persons. Hence there are those who derive the person of the State from God as the author of nature, but the person of the Church from the positive will of its divine Founder.

⁸ *Principes de droit civil français*, vol. 1, p. 375. This can be understood to some extent insofar as by the name *moral person* you understand merely a certain artificial subject for possessing goods.

Accordingly, in this opinion, two moral persons exist *per se*: the Church and the State; the others are created by one or the other of these.

b) The fortune of that opinion has recently begun to decline, and not a few of the jurists of France and Germany now undertake the defense of a natural moral person, as though, by the same cause by which a society is generated, a moral person is also generated which is fully capable of possessing rights, unless perhaps it is impeded by a positive prohibition of law.

To demonstrate this person, some employ the ancient similitude between a society and an organic body, which they exaggerate so greatly in their discourse that they attribute to a society—and especially to the State—a true body endowed with its own life. Thus Spencer, *Principes de sociologie*; Schaeffle, *Bau und Leben des socialen Körpers*; Jaeger, *Manuel de zoologie*; Espinas, *Les sociétés animales*.

Others, rather, who think that there are as many persons as there are wills, have attempted to demonstrate in groups a certain peculiar will wholly distinct from the sum of the wills of the members. Hence they said that by this will there is constituted a new entity, a subject possessing rights, that is, a person. Several French jurists have also assented to this opinion, called the *Willenstheorie*, which Zitelmann⁹ and Meurer¹⁰ devised.

⁹ *Begriff und Wesen der sogenannten juristischen Personen.*

¹⁰ *Der Begriff und Eigenthümer der heiligen Sachen.*

c) Taking a kind of middle way, several theologians and canonists, whom Most Illustrious D. Waffelaert¹¹ seems to have preceded, distinguish moral persons as true and fictitious. The true are the State, the Church, and the smaller colleges of a permanent character which are subject to one or the other; the fictitious are private groups formed for the sake of profit, and certain corporate bodies of things, for example, endowed “burses,” which have acquired personality by the beneficence of the legislator.

¹¹ Insofar as he, according to his genius, composed a most orderly system, which also pleased other most learned men, for example, Rev. D. Moulart and Rev. D. Scheys. The works themselves were proposed at the beginning of the disputation. Moreover, no one will wonder that, in a difficult matter illuminated only very recently by the investigation of many, we reverently depart from authorities whom we would have preferred to follow, especially since in the matter they seem to us to differ little from the truth.

Nevertheless, this true moral person is said to exist “as a subject of right distinct from the individuals and from the whole actual collection,”¹² and at the same time is constituted “an entity of reason, abstract, and distinct by reason from the individuals,” indeed even from the members taken collectively.

¹² Cf. Waffelaert, *De Iustitia*, no. 160, and Scheys, p. 49.

d) A fourth genus of opinions holds that a moral person is nothing but a fiction of the mind which, destitute of every juridical efficacy, can assist understanding and speech. This persuasion has already become very widespread in Germany, and has obtained distinguished defenders in France and Belgium.¹³

¹³ Especially Van den Heuvel, work cited.

But while they deny that a proper subject of social rights is constituted, they themselves vary in opinion when assigning the subject to which the rights and goods said to belong to a group are to be

attributed. Some, with Brinz as their authority,¹⁴ defending what is called *Zweckvermögen* [purpose-patrimony], think that certain patrimonies belong to the very end for promoting which they were constituted; concerning these, therefore, it is no longer necessary to ask whose they are, since they are, as it were, *sui iuris*. Others, for example, Mr. Van Biervliet,¹⁵ following Mr. Serment,¹⁶ think that the common things of a group are in the proprietary dominion of no one, but are the objects of peculiar rights which are not only exercised but truly possessed by the governors of the group. Finally, others, following the great jurist Ihering, ascribe all rights and goods to the members themselves. This opinion, recently defended in France with great force of reasons by Professor de Vareilles-Sommières,¹⁷ likewise seems to us, as regards the substance of the matter, both truer and more conformable to antiquity.

¹⁴ *Lehrbuch der Pandekten*, no. 234.

¹⁵ Work cited.

¹⁶ Work cited.

¹⁷ Work cited.

2. As regards the subjects of which moral persons may be predicated:

a) There are now those who, because of the juridical relations inherent in them, call physical persons themselves by the name of juridical or moral persons. Thus Pufendorf himself, *De iure naturae*, bk. 1, chap. 1, §12.

b) For others, there are as many moral persons as there are groups or institutions which are endowed with civil personality. Hence, after considering the laws, they will say that in our State moral persons are the State, provinces, municipalities, church fabrics, seminaries, civil hospices, publicly recognized groups of men of the same profession (*unions professionnelles*) or for mutual assistance (*secours mutuels*); and, in general, commercial, but not civil, companies.

c) Others, who defend the innate personality of corporate bodies of persons, say that all and only groups of men are persons.

d) Others connect personality with the end to which certain things or certain corporate bodies of persons are assigned, at least if, withdrawn from the discretion of the members, they seem to subsist as though by themselves.

e) Several theologians think thus: in the broadest usage, any groups of men are moral persons; properly, only those groups which are formed not for an arbitrary end but have a permanent foundation in the common necessity of men as such, and at the same time consist of sufficiently many persons. Thus the State, the Church, and the parts of one or the other; municipalities, dioceses, parishes, monasteries. Besides these, by law certain companies formed for the sake of profit are feigned to be persons, and even certain things: foundations, hospices, etc.

3. Concerning the province of a moral person.

Von Savigny speaks very moderately when, considering merely private law, he reduces everything to the capacity of possessing, so that he describes a moral person as “an artificially admitted subject capable of possessing.”¹⁸

¹⁸ “An artificially assumed subject capable of possessing property.” Work cited, §85. The book prints the German ungrammatically as *Ein des Vermögensfähiges künstlich angenommenes Subject*; the certainly intended reading is *Ein des Vermögensfähiges künstlich angenommenes Subject*.

Most Illustrious D. Waffelaert and those who follow him also seem to look to the possession of goods.

Others, if they wish to speak consistently, must refer to the moral person whatever rights pertain to the group, or whatever is said to be done by the group.

Some, indeed, advancing further, are not far from distinguishing the sex of a moral person,¹⁹ and declare moral persons capable of perpetrating offenses and undergoing penalties, something to which Taparelli himself does not seem averse.²⁰

¹⁹ Thus Bluntschli, *Théorie générale de l'État*, chap. 1, no. 7 (translated into French by Schiedmatten).

²⁰ *Saggio di diritto naturale*, vol. 1, no. 650 ff. This philosopher seems to have paved the way for the positions of theologians who defend the cause of the moral person.

533. This subject of right has been called by various names. Von Savigny acknowledges that there is no Roman name, and adds that in the places of law these persons are so considered that one might call them fictitious. At the same time he himself attests the frequent use of the name *moral person*,²¹ to which he prefers the name *juridical person*, so that it may appear more clearly that the same exists only for juridical effects. They not rarely call it a *civil person*, whether they think it must be created by civil law, or by this name wish to signify a moral person which is recognized by the State.²²

²¹ Observe that Pufendorf, *De iure naturae*, bk. 2, chap. 1, §§12-13, is sometimes wrongly adduced in this matter. For he calls both individual men and groups of men moral persons; but he distinguishes these as simple and composite: simple are individual men insofar as they discharge an office, have a status, etc.; composite are several individuals who are so joined by will that the will of the ruler is regarded as the will of all, etc.

²² Most Illustrious D. Waffelaert and others attribute another force to these names; cf. Scheys, corollary, p. 50.

In philosophical usage, every person is to be called moral and juridical, insofar as the rationale of a person follows upon the rationale of a moral being—that is, one endowed with intellect and free will—and in reality demands the possession of rights. Hence, if any person, by the very fact that it is called moral or juridical, is to be distinguished from others, this must be referred to some other signification of these words: for we predicate morally of things that which they are not truly or physically, when they differ so little from the strict or true rationale of the name that the disparity is neglected for moral use or in moral estimation;²³ likewise, we call *juridical* whatever is ordered to a juridical end.

²³ Cf. the third corollary.

Whether certain persons can thus elegantly be called moral or juridical will be determined in a corollary of the thesis.

Article II. Formulation and Arguments of the Conclusion

THESIS XXXIV

I. Although the distinction of a physical and a moral person may be conceded to received usage and the convenience of speech;

II. nevertheless, in reality, apart from physical persons, there is no subject of rights in any society of men;

III. but all the goods and rights of any group are the goods and rights of the members, to be possessed, however, not separately but in common.

534. State of the question. 1. DIVISION. Three parts of this conclusion are perceived. The first directly opposes no one; the second attacks all who regard a moral person as a peculiar subject of right; the third, after rejecting other explanations, adjudges the goods and rights of the group to the members themselves.

2. THE TERMS ARE EXPLAINED. *Although ... to received usage and the convenience of speech.* While we advance these causes, we deny the utility of this distinction for explaining juridical effects, and admit only that utility which is customarily found in preserving usage and in a suitable image. Therefore, we already enter indirectly into the controversy.

May be conceded. A concession is not full approval. We therefore signify a mind little inclined toward this distinction. Nor by this concession do we prefer the words *moral person* to another appellation.

The distinction of a physical and a moral person. A physical person is a rational being; a moral person is a group of persons or an institution which, by its own government or external appearance, seems to imitate a physical person. It can be described negatively as a nonphysical person.

Nevertheless, in reality, that is, if you turn your mind from a concept of the mind to those things which exist in the order of things, or from the subjective concept to the objective.

Apart from physical persons, that is, the members.

There is none in any society of men, so that we may also exclude the opinion of those who think that a moral person is truly constituted only in certain groups.

A peculiar subject of right. This is the head of the controversy.

But all the goods and rights of any group. Here you should distinguish especially the goods and rights of the group from the goods and rights which exist in the group. For it can happen that some rights or institutions exist on account of the common good which nevertheless are not possessed by the group. For, in things of a higher order, that does not hold which can be said of things that are so far beneath man that man perfectly dominates them: namely, that they are possessed by the same person to whose utility they are referred. For the rest, not even the defenders of the moral person assign to it all things which seem to pertain to the group on its account. This, therefore, is the general force of our proposition: whatever is predicated of the group is predicated, not of some new subject, but of the members.

To be possessed, however, not separately but in common. We therefore distinguish two genera of possession: singular or proper possession, and common possession; that is, there are two specifically

diverse modes of having things, but not two genera of those who have them.

These two modes do not fall simultaneously upon the same things, as will be declared in the proof itself.

3. THE MATTER TO BE DISPUTED, lest we contend over a name, must be accurately defined here. We by no means deny that certain groups, more than others, take on from their government or circumstances such an appearance, on account of which the mind depicts to itself the group after the manner of one person distinct from the members; but we reject this: that a true subject of rights distinct from physical persons is ever constituted *per se* or by an efficacious fiction of law.

II. Proof.

535. A. OF THE FIRST PART. Concerning conceding the distinction of a moral and a physical person.

In order that we grant to usage and the convenience of speech the distinction of a moral and a physical person, it is sufficient that the image rendered by the words *moral person* be founded in reality, and that both usage and convenience of speech in fact commend this figure. **But this is so. Therefore.**

The minor is proved. Beyond doubt, certain groups—for example, the Church and the State—are seen to be furnished with a patrimony distinct from the members' own goods; they remain when the members have changed; and their utility, fortune, and so forth are discussed as though the utilities of the group and of private persons were plainly disparate, indeed not rarely contrary. Those who could in no way act on behalf of the private members act in the name of groups, and they do things which surpass private power. But if every gathered multitude already seems to our mind to compose one entity, much more, where these things occur, is the thought of a person distinct from the members themselves brought upon us. As we were already admonished in Roman law, these groups seem to sustain the function of a person.

No one will deny the most frequent use of the formula.

Finally, both clarity and brevity of speech are provided for if you use the one name *moral person* and refer to it rights and goods subject to a special government, rather than if you were to say “the members considered universally and formally,” and attribute to them things which do not belong to them when considered in another respect.

536. B. OF THE SECOND PART. Exclusion of a peculiar subject of rights.

To establish this principal part of our intention, we proceed thus to fortify the way.

The historical prejudice. 1. This must already have force as a very great prejudice: that neither in Roman law, although a proper title, *On the Law of Persons* (I, 3), is found in the work of the *Institutes*, nor in canon law, nor among jurisconsults before the nineteenth century, were persons ever divided into physical and moral.

2. But specifically against the doctrine which places within the discretion of the law the juridical personality of already existing groups, whereby they become capable of possessing, there is the fact that it rests upon a spurious interpretation of Roman law. For, in the title of the *Digest*, *Whatever Belongs to Any Corporate Body*,¹ the words “those who have been permitted to have a body” and other

similar expressions were understood by von Savigny as though *body* stood for the juridical capacity which certain groups above others would acquire by the beneficence of the law. On account of the authority of this interpreter, this interpretation readily prevailed. But today it has been fully ascertained, and in Germany placed beyond controversy,² that by the name *body* the group itself is to be understood. For in the Roman State, no differently than formerly in France, besides groups which were freely permitted to be made among certain and not very numerous persons for temporary ends—for example, for the sake of trade—there were constituted colleges which lay open to all persons of a certain condition, place, and so forth. Since these could become dangerous to public security, unlike the former groups, they were prohibited from assembling without the authority of the prince. Hence persons to whom leave was given to compose a college were permitted “to have a body,” and consequently, “after the example of the commonwealth, to have common things, a common treasury, and a representative or syndic through whom, as in a commonwealth, that which ought to be transacted and done in common may be transacted and done.”³ Hence, to be able “to have a body” is the same as to be able to form a group.

¹ Law 4, title 3. Cf. especially law 1.

² It is not likewise so in Belgium and France. Cf., for example, the work of Van Wetter at the places cited.

³ The source prints this footnote marker but supplies no corresponding footnote text.

Moreover, it seems altogether incredible that the reality of the moral person, whose daily activity is spoken of, was unknown for so many centuries and, through the marvelous good fortune of an erring man, was finally discovered at last in the nineteenth century.

The argument. A new subject of rights is neither required by any necessity for explaining government or stability, nor can it be admitted philosophically. **Therefore, it must be rejected.**

1. The first part of the antecedent is proved.

In order to show that there is another subject of rights besides physical persons, they argue from the distinct possession and administration of patrimonies, from the group's own stability, from the rationale of the cooptation of members, and from the end to which the group is ordered.

But, apart from the fact that it scarcely appears how the rationale of cooptation and of the end could profit the intention of the adversaries, all these things can be explained without a new subject. **Therefore. For:**

a) **Patrimonies** are shown by the adversaries to be distinct because individual members are not bound even to pay proportionately those things which must be furnished by the group, nor to receive proportionately those things which are owed to the group; because the goods of the group are governed and lawsuits are instituted by one or a few without any participation of the members, indeed sometimes against the members; and so forth.

Come now: in the very society which men contract at their discretion, it can be agreed that certain goods are so assigned to a common end that, with anyone's private use excluded, they are handed over to be governed by one or a few constituted in a definite number and manner, with the added precaution that by their agreements the governors can bind only the common patrimony. A prohibition of positive law could perhaps obstruct this government, but by no means a defect of moral personality in the group, or the attribution of rights to the corporate body of the members. But

if, in that genus of societies which is owed to nature or to a positive institution of God, similar government is altogether demanded on account of the multitude of members, nature or the positive will of God will be no less capable of efficaciously introducing that which can exist in any group by the formal consent of private persons.

b) The stability by which certain groups—for example, States—seem to survive when citizens die occurs not rarely in other institutions also. Thus the Holy See is thought to remain the same when the Pontiff has changed; thus even the court of a single judge—for example, of the present-day justice of the peace—is judged to be the same, although several persons, one after another, have discharged the magistracy. Nevertheless, no one will ascribe rights to some moral pontiff or judge. What of the fact that, even among material things, a house is not thought to perish although several parts now consist of other stones? Directly, however, stability of this kind is explained by the unceasing succession of some into the place and parts of those departing. And by mutual agreement itself, the members can stipulate that the group not be dissolved by the death or departure of anyone, but that the parts of those departing fall in reality to the others in common. We see this occur in groups which are called mutual-aid societies (*secours mutuels*).

But if a society rests upon the natural and common necessity of men, it will happen that this succession is more perpetual, but not that a subject distinct from all the members is constituted.

c) The cooptation of members into the State, they continue to argue, is made without selection, nor is a definite contribution brought by new members.

But who does not see that it is consonant with the nature of the State that most persons—not all—be coopted as citizens by birth itself within the territory? Then the very universality of the end and the multitude of members bring it about that the defined contribution demanded in commercial groups is not to be exacted. For there is no one *per se* who cannot be useful to the State. But the fact that some are coopted who *per accidens* will be useless will harm the State less than if, in so great a multitude, you wished to explore the ability of individuals. For the rest, those who are born weaker, so that they furnish no hope of useful work, customarily belong to useful families, which deservedly are to be assisted in protecting their infirm members. Add that the very exercise of humanity and charity is not foreign to the common good of the State, since citizens are perfected by this exercise. But all these things by no means prove that a subject of rights is to be distinguished from the members. And, again, in a mutual-aid society whose members are as many as work in a certain workshop, a similar cooptation of members already appears in some manner.

d) The end of the State and of the Church is not only the common good of those who actually belong to one or the other.

True; but unless they show that each is directed to the good of some moral subject which they distinguish from the members, by this consideration they say nothing that pertains to the matter. Moreover, the end of a thing often extends beyond the possessor of the thing. Thus fields which are cultivated now will also be useful to posterity; and the private possession of men is ordered to the common good of the State. To declare the matter directly now, the present common good is the good of the present members; but just as, by the unceasing accession and departure of members, it happens that the State and the Church are continued with a moral, not a physical, identity, so the common good is continued, morally but not physically the same. Finally, by the very union of blood

and friendship or by the love of Christ, it is also easily explained why they are solicitous for the future fortune of the State and the Church, since they are accustomed to regard the good of posterity or the glory of Christ as their own good or their own glory.

2. The other part of the antecedent is proved: every rationale of this subject is philosophically repugnant. For:

This subject, which would be the moral person, is said either to be feigned by human law; or to subsist without a fiction of law, and this either as distinct in reality or as distinct only by reason from physical persons.

But nothing of this kind can be admitted philosophically. Therefore, it is to be rejected.

Not the former rationale of the subject. For: a) Concerning the commonwealth—after whose imitation the other colleges exist, as Roman law says—and concerning the Church, nothing of this kind can be devised, since the moral personality of the commonwealth is prior to human law, while the personality of the Church is withdrawn from the dominion of human law. b) Nor is it apparent how true rights can inhere in a fictitious person, since the foundation ought by its firmness at least to equal those things which rest upon it; or why the human legislator has need of this artifice for conceding rights which, as all acknowledge,⁴ were established for the utility of men, that is, of physical persons.

⁴ “Every law has been established for men.”

Not the other rationale. For if you posit a subject distinct in reality, you affirm that which escapes every thought. For by the fact that men are gathered, they are not intrinsically changed, nor do they enter as parts into some composite physically made one by a new form, nor are the wills of the members physically united. Hence such a subject can exist neither as an organic body nor after the likeness of a separated soul which manifests itself by unity of will.

But if you posit a subject distinct by reason,⁵ either you merely contend that the common goods and rights are possessed by the members not under every rationale but under a certain rationale, or that there must be considered in the members that respect under which they possess them; and then, since you acknowledge that there is no other subject, you concede our opinion in reality. Or, on account of this distinction, you judge that there is another subject; and then it occurs that a distinction of reason cannot found a division of persons. For a distinction of reason is between inadequate concepts of the same thing; but a person is a whole in which all things predicated of the thing inhere and to which they are attributed. Therefore, another person cannot be constituted by a distinction of reason.

⁵ By a reasoned distinction of reason, as is apparent. This has as its cause the perfection of the thing and the imperfection of the mind, by which we are compelled to penetrate and, as it were, exhaust the truth of one thing through several inadequate concepts.

N.B. If they wish to regard some entity of reason as the subject of rights, it stands in the way that true rights must be possessed by a true person, while an entity of reason, at least as regards the mode in which it is conceived, does not exist outside the intellect.

Add also that, when the adversaries argue from the diversity of essential qualities and from the preserved identity of a subject which remains one although several members have been changed, they

advance reasons which either accomplish nothing or prove a real distinction.

For the rest, this opinion can already be excluded by the fact that the whole composite does not differ even by reason from the parts taken together and placed in order. **Therefore:** any group whose parts are the members does not differ even by reason from the members taken together and as such. Hence there is no ground upon which you may distinguish a subject of rights from the members taken together.

537. C. PROOF OF THE THIRD PART.

a) Concerning the true possessor of the rights and goods of a society.

It is readily established that all the goods and rights of a society are the rights and goods of the members: both because by the name *society* the members as such are in reality designated universally, so that you would say the same thing by *the rights of the society* and *the rights of the members*; and because the goods and rights of the society are in someone's dominion, while apart from the members there is no other subject capable of such dominion.

b) These rights and goods are to be possessed not separately but in common.

Among the utilities which pertain to persons joined by a social bond, some are proper to individuals, while others are constituted or shown to be common by the bond itself. But the goods and rights which are called those of the society are assigned to common utilities either by the members' consent itself or by the will of a donor or one legitimately commanding, so that, against the will of the other members or of him to whom this part of the right belongs,⁶ they cannot, while the society exists, have another honest use. Therefore, they are possessed not separately but in common. This obligation of justice does not prevent them from being truly those of the members, in whole or in part. For from the fact that a utility is said to be common, it follows that it also belongs to others, but not that it does not belong to me. Moreover, things will be those of the members wholly if they can at least dispose of the thing by common consent; otherwise, the dominion of the members is only imperfect. But outsiders are excluded from a thing which is common among the members as though it were possessed by one man. Therefore, with respect to outsiders, there is a true property of the multitude. By this exclusion of outsiders and assignment to the common utility, the marks of the possession which is called common are composed.

⁶ Concerning that diminished rationale of dominion, cf. scholion 8.

538. It is useful to confirm the conclusion by authorities.

Aristotle⁷ says that a State is a certain multitude of citizens which, so long as the same form of polity remains, can be called the same, although some citizens have died and others have been born, but with that genus of identity by which we call rivers and springs the same although they carry different water.

⁷ *Politics*, bk. 3, chap. 1, no. 1, and chap. 2, no. 3.

"The commonwealth," says Cicero,⁸ "is the thing of the people; but a people is not every group of men gathered in any manner whatsoever, but a group of a multitude associated by consent in right and by a communion of utility."

⁸ *On the Commonwealth*, bk. 1, chap. 25.

“What is the commonwealth except the thing of the people? Therefore, a common thing is certainly the thing of the State. But what is the State except a multitude of men brought into a certain bond of concord?” Thus St. Augustine, Epistle 138, no. 10.

We borrow these things from St. Thomas: “Justice orders a man in comparison with another.... In one way, toward another considered singularly; in another way, toward another in common, insofar, namely, as he who serves some community serves all the men who are contained under that community.”⁹ “Legal justice orders a man in those things which are toward another: immediately as regards the common good, but mediately as regards the good of one singular person.”¹⁰

⁹ II-II, q. 58, art. 5, corpus.

¹⁰ II-II, q. 58, art. 7, ad 1.

Molina speaks in this manner: “Since a commonwealth is nothing other than the collection of all its parts, certainly its goods are those of the parts, possessed by them, however, in common.”¹¹

¹¹ *On Justice and Right*, treat. 1, disp. 12, no. 3.

Finally, C. de Lugo declares universally: “A community is not distinguished from its members, as is established.”¹²

¹² *On Justice*, disp. 1, no. 68.

The Gloss of Roman law had spoken in the same manner: “A corporate body is nothing other than the men who are there.”¹³

¹³ On law 1, §1, Digest, XLVII, 22, under the word *Competit*.

These passages certainly do not refute in express words the position of the adversaries, which, because it was new, was rather unknown than attacked; but some more openly than others profess that there is no new supposit in a State or community, but refer all things to physical persons, who possess singular and common things only in another manner.

This meaning is excellently demonstrated by the explanation of the vow of religious poverty. Observe that colleges of religious are to be referred among true moral persons. Hence, if the classical interpreters of canon law had recognized in communities a subject other than the religious themselves, they would spontaneously have attributed the common goods to this subject. But, on the contrary, they attribute common possession to the same subject—that is, to the religious—from whom they withhold private goods. What is the persuasion of the religious themselves? They constantly speak of the things of the monastery as of their own. And those who wished to profess a greater poverty, the Friars Minor, assigned to the Holy See goods which otherwise would have been common. What need would there have been for this counsel if the goods of the community were already *per se* not truly those of the religious, but of some distinct moral person?

Moreover, let the Doctors be heard. “All religious can possess property in common, with the exception of the Friars Minor observing the rule to the letter”; thus Reiffenstuel, bk. 3, tit. 35, no. 3. And Schmalzgrueber, under the same title, no. 5: “In most religious institutes, although individual persons cannot possess dominion over any temporal thing, nevertheless dominion over temporal things is retained and obtained in common.” More recently, Fr. Piat:¹⁴ “Religious are capable of possessing in common and of having true dominion over movable and immovable things.”

¹⁴ *Praelectiones iuris regularis*, vol. 1, p. 219.

539. III. Difficulties.

1. A society is something other than a certain sum of men; a social good is something other than the sum of particular goods. **Therefore**, besides the members, there exists a subject of social goods, or a new person.

Reply. I distinguish the former part of the antecedent. A society is something other than a sum of any men whatsoever, **I concede**; it is something other than a sum of men intending a common end, **I deny**.

Just as the owner of a thing is not just anyone but a man who stands in a certain relation to the thing, so a society expresses a certain mutual relation of persons and those things which are demanded by such a relation—for example, authority. Yet it in no way follows from this that a new person is added to the owner or the society.

I also distinguish the other part. A social good is something other than the sum of particular goods, that is, of goods which are possessed separately by the members, **I concede**; that is, of goods which belong to the members, **I pass over**. For rather than a sum, the social good is among the goods of the members.

In order that the social good belong to the members, it is not required that it be the sum of the members' goods, but it is sufficient if the members have dominion over the social good. Otherwise, I could separate one of five goods possessed by Titius and argue thus: This good is not among the four possessed by Titius; **therefore**, it is not Titius's. If only goods which are possessed separately are considered, a common good certainly is not found among such goods; but it is not for that reason excluded from the goods of the members, since there is a twofold rationale of having goods.

I insist. But it is not among the goods of the members, since the members cannot freely dispose of the things, that is, they lack the right of disposing of them.

Reply. I deny the assertion, and I distinguish its rationale. The members individually lack the right of disposing, **I concede**; all together, or by common consent, *I subdistinguish: per se, I deny; per accidens*, because they belong to a moral person, **I deny**; for another cause, namely, on account of the burden with which the things are affected, **I concede**.

Per se, the members have a free faculty of disposing of the common thing, to be exercised, however, by common consent. But *per accidens*, it can happen that they have received certain goods from elsewhere with the burden of preserving them or of continuing the society. Then, indeed, it will not be lawful to dispose of these things—not because they are possessed by a moral person, but on account of the burden imposed upon the things. In a similar manner, even one person can possess a thing with the burden, for example, of preserving it and thereafter handing it on to another.

2. **According to the testimony of St. Thomas,**¹⁵ “the common good of the State and the singular good of one person differ not only according to much and little, but according to a formal difference.” And the passage is confirmed by the authority of the Philosopher. **But:** Unless there is held to be a subject distinct from the citizens, even collectively taken, these two rationales of good would not differ formally. **Therefore.**

¹⁵ II–II, q. 58, art. 7, ad 2.

Reply. I concede the major. I deny the minor. In order that the goods differ formally, it is sufficient that they be possessed under another genus of possession. Certainly, we too distinguish the common good of several persons and the singular good of many persons.

3. The essential qualities of a society as such and of the members collectively taken are different. Therefore, a society as such denotes a subject other than the members even collectively taken.

Reply. I distinguish. The specific rationale of society and the members collectively taken differ in essential qualities, whether logical or real, *I subdistinguish*: in logical qualities, **I concede**; in real qualities, **I deny the supposition concerning the specific rationale of society**, since this is only logical. The individual rationale of society and the members collectively taken differ in essential qualities, *I subdistinguish*: if you take the members together reduplicatively, **I deny**; if under another respect, **I concede**.

The collection of members can be taken either confusedly, or ordered in another manner, or ordered to the common good of the society. Only in the last case are the members taken collectively and reduplicatively; and only then do they not differ from the society as such. Thus, for example, the citizens of Belgium and the Catholics of Belgium, even if all Belgians were Catholics, are reduplicatively different.

I insist. But even the individual rationale of society and the members taken collectively and reduplicatively have different essential qualities. For this society remains the same although several members have been changed. Therefore.

Reply. I deny the subsumed minor. And I distinguish the rationale. A society remains the same when several members have been changed: morally the same, **I concede**; physically, **I deny**. Moreover, observe that the members collectively taken are also morally judged to be the same.

The cause of moral identity is to be derived from the continuous rationale by which comparatively few persons enter or depart. If exceedingly many entered or departed at once, the multitude would be judged only specifically the same. For *per se*, since Titius and Caius are two individual persons, the intention of some good which is transferred from Titius to Caius can be only specifically similar. This also holds for new citizens who, with a similar mind, succeed into the place of the deceased.

4. One who usurps for himself a thing which belongs to a society is not immune from the stain of injustice even in part. But unless the thing belonged to a subject distinct from the members, he would be excused at least in part.

Reply. I concede the major. I deny the minor. For, apart from the fact that the part of the common thing falling to each individual is minimal, by a debt of justice the individual citizens are bound to permit the thing to remain common and not to make it proper to themselves even in part.

Article III. Supplements to the Doctrine

I. COROLLARIES

540. What is called the capacity of a group by which it is permitted to possess, etc., is in reality only the capacity

of the persons of whom the group is composed. To deny it is to circumscribe the rights and faculties of physical persons. But it has happened, because of that false appearance of a moral person, that laws which ought to have been unpopular have been regarded as popular, and common possession, although often honored by a most noble end, has seemed less sacred and almost odious. Much more wisely, the ancients did not grant every faculty for forming colleges, but did not deny common goods to honorable colleges. Nevertheless, by these words we by no means deny that the faculty of possessing in common, in order to a definite end, can sometimes opportunely be circumscribed, lest this genus of possessions exceed due measure.

541. Charity toward a community. Since the State is only a collective name of physical persons, whatever virtue can be terminated at men can also be exercised for the sake of the State. Nothing, therefore, prevents us from exhibiting charity toward the State as well as justice.

542. Concerning the very name *moral person*. The ancients distinguished proper or particular dominion and common dominion or possession in common much better than the moderns distinguish physical and moral persons. For since physical persons are in reality designated by the name *moral person*, the division is already proved to limp. Moreover, the name *moral person* seems little apt and inelegant. For the word *moral* signifies a certain broader use of the word to which it is added, yet one of such a kind that in morals it is not judged to depart from the truth. Thus *moral impossibility* is a great difficulty which, given the customs of men, will not be overcome; *moral necessity*, besides the proper obligation of the will, also designates a most urgent cause which does not press equally with strict necessity; *moral identity* indicates a difference which is not attended to; *moral certainty* is, in a broader usage, such a probability as performs the function of certainty in human use. Hence *moral person* would properly be said of something which, although it were not properly a person, nevertheless morally approached the rationale of a person sufficiently that it was to be regarded as a person.

I say *morally*, that is, not by a fiction of the mind, but truly on account of an objective analogy. But there is nothing of this kind, since in a group there are truly only physical persons.

Nevertheless, on account of the consent which is contained in every society, the wills of the members are morally joined; hence the members, as such, could be said to be morally one person. But then the word *morally* affects not some genus of persons but the number. Therefore, because several persons morally come together into a certain unity, they are by no means to be called a moral person.

II. SCHOLIA

543. So that we may now declare the matter, leaving aside the name, the same consent of wills from which a certain unity is effected is conceived as the form by which the parts, that is, the members, are perfected. Yet this form is not one by which, from an alteration of the parts, a physically new entity is constituted, concerning which it can be asked whether it subsists in a rational nature or not. Therefore, when a society is conceived after the manner of a physical person—something which can also happen concerning rivers, forests, and so forth—there is merely had an entity of reason, almost as a privation conceived as a positive entity. This entity of reason is called a moral person only improperly. For the latter, as we were just saying, would be some true entity which could morally be regarded as rational and as a subject of right.

Besides the consent of wills, the government which certain groups employ also suggests to our mind the image of a person. For it is altogether consonant with the nature of certain groups that most members abstain from administering the common thing; that goods possessed in common be continually distinguished from the possessions of individuals; and that the group not be dissolved by the departure of members, but be preserved by the continual accession of new members. On account of these and other similar things, these groups present the image of a person.

But, as must be carefully observed, this image is generated by the government itself, while the fiction itself generates no effect; that is, a fictitious or moral person is by nature posterior to the effects which the adversaries themselves ascribe to it.

And if you should ask concerning the groups which require such government, they are those which consist of many members or have a lasting and ample end. Hence they will especially be those groups which, as Most Illustrious D. Waffelaert observes, are founded upon the common necessity of men, that is, the Church and States.

544. Several persons in one. When some right—for example, dominion—which can be referred to one person belongs to several in common, the several then sustain, as it were, one person. And likewise, when rights which are customarily divided among several are exercised by one man, he can be said to sustain several persons. Thus Cicero:¹ “I alone sustain three persons with the greatest equity of mind: my own, that of the adversary, and that of the judge.” Yet you should not think from this that there are several subjects in this case, since merely several rationales inhere in one subject.

¹ *De oratore*, bk. 2, chap. 24.

545. The possession in common of members must be distinguished especially from the undivided possession of several who are joined by no bond of society. The latter have no other community than that which arises from undivided possession; this possession is demanded by no common end, and hence is had merely *per accidens* and tends toward no common good, but only toward the singular good of several persons. In a society, on the contrary, undivided possession is constituted *per se* on account of the good intended.

546. Concerning the perpetuity of societies. There must be distinguished: **a) The perpetuity of the specific essence and of the numerical essence.** The former perpetuity belongs to groups which are founded upon a perpetual inclination of human nature. Thus there will always be States and families, although nothing demands that *this* family or *this* State remain perpetually. The latter perpetuity can only be moral, since some members succeed others. And from the divine promise it belongs to the Church alone, whose moral identity will not be destroyed. **b) Perpetuity from a positive intention and from a continued or renewed intention.** It is one thing to will that a group be perpetual, another not positively to assign a term. Thus, from the intention of their founders, States and religious Orders are perpetual.

547. Concerning the guilt and punishment of groups. Because certain States are shown by historical documents or by the sacred utterances themselves to have been affected by rewards or penalties, they are not for that reason to be regarded as distinct subjects which, as such, can have good or evil merits. For the same is affirmed of families and houses, which nevertheless the adversaries deny to be moral persons. But these things are sufficiently explained: **a)** By the fact that the penalties of this life can be useful trials for the innocent, if any share losses from another's guilt;

b) By the fact that, by their very intention, good men desire their acts to profit persons joined to them and consequently their fellow citizens; and divine Providence has made men so conjoined that some experience many goods and evils on account of others, yet in such a way that no one except the guilty undergoes the irreparable penalties of eternal misery; c) By the fact that through civil union itself it happens that many, either positively or negatively through a neglected duty, are participants in offenses, so that morally they seem to have been committed in the name of all.

548. In Roman law certain corporate bodies of things—for example, a lying inheritance—sustained the function of a person. It is evident that these goods in reality belonged to the heirs, whose designation was perhaps uncertain. But on account of these or similar doubts, the goods of the inheritance were subject to a special government.

549. Concerning foundations. He who establishes a “bursē” for assisting the studies of the poor, or a hospice for the elderly, or makes another foundation, is in reality the author of some society. For he hands over some good to be possessed in common, under certain added conditions, by all whose present or future necessity he plans to provide for. Hence, if you ask who possesses a hospice which lies open to all citizens of a certain municipality, they are the present citizens of the municipality themselves, in such a way that they will have its use if they labor under poverty or illness, and by the law of the foundation must preserve the hospice so that future citizens can possess the same. By the same law of the foundation, as many as leave the municipality lose every right.

550. That diminished right which the citizens of a municipality have in the said hospice on account of the laws of the foundation supposes another person in whose possession there exists the remaining part of the rights contained in the rationale of dominion, almost as a real servitude implies an owner of the servitude. For it cannot happen that some thing is now in the perfect possession of no one. To use other words, the rights of dominion, which posit the faculty of using, enjoying, and disposing, can indeed be divided among several, so that one enjoys and another retains the dominion which is called naked, but not so that a part of the rights is extinguished. Who, then, in the example adduced, has the remaining possession of the hospice? *Per se*, according to our opinion, the heir of the founder has it, unless, on account of the common good, the Church or the State, according to the character of the foundation, has claimed such a right for itself as its own. For while the founder lived, no one would certainly have doubted that this remaining right belonged to him, so that he could have dispensed the municipality obligated by the law of the foundation from that law. But it is established that the heir succeeds to rights which have not been donated to others by legacy. Yet because this right has slight utility and the end concerns the common good, the governors of a perfect society can bring this matter under their patronage, so that public power alone can permit the municipality to depart from the law of the foundation.

551. Whence so great a fortune of the moral person. Perhaps the excessive inclination by which men in the nineteenth century inclined toward “individualism” and “materialism” contributed not a little to the marvelous fortune of the moral person. From the former inclination, those things alone which had a private use were now regarded as goods of men, and the rationale of common possession was obscured. But materialists scarcely perceive how men can make their own a cause superior to the economic order, and by associated work pursue it under a rationale similar to monetary gain. Hence merchants were said to seek money for themselves; but those who endeavored to promote letters, the

education of youth, or religion seemed not to acquire for themselves the goods assigned to this noble end, but to acquire them for some abstract rationale or moral person.

Chapter II: On the State or Commonwealth

552. Rationale and opportuneness of the argument. Although it would be foreign to our proposal to dispute properly concerning the commonwealth or State, since this argument is customarily referred to the parts of the *Institutes of Natural Law*, nevertheless accurate knowledge of it is so useful, and almost necessary, for solving several questions of justice, especially legal justice, that at the end of this volume it seemed proper to speak of it summarily yet clearly, according to our abilities, chiefly intending this: that the office and parts of public power might be readily perceived. Hence we shall speak in order concerning the origin or nature of the State; its end and the common good; the means to the end and public power; the associates, or members of the social body; the worst commonwealth and its exemplary form.

Article I. On the Origin or Nature of the State

553. The State is a natural institution. When the question is, not about the causes by which this or that State arose, but why political societies exist, the positions of Hobbes and J. J. Rousseau concerning the social contract must be entirely abandoned. According to them, men, after leaving behind the state of war or of solitary liberty and autonomy, would have established by a formal pact a bond of social peace or servitude. Rather, the statement made by St. Thomas¹ after Aristotle² must be proved altogether: “It is natural to man that he be a social and political animal.” For by an efficacious and definite impulse of nature, without formal deliberation or conscious assent, men arrived at political society. For:

¹ *On the Government of Princes*, bk. 1, chap. 1. Observe that up to the fourth chapter of book 2 this treatise is certainly an authentic work of St. Thomas.

² *Politics*, bk. 1, chap. 2. The book prints “bk. 2, chap. 2,” but Aristotle’s statement is in book 1, chapter 2.

1. Nature made man apt, inclined, and compelled by necessity itself toward society, that is, toward a stable union for a common end.

Nature made him *apt* by the instrument of speech; *inclined*, on account of the sweetness which it placed in communication with others and the efficacy by which, through a communion of work, labor is lightened, through a communion of evils, pain is soothed, and through a communion of goods, enjoyment is increased. Finally, by very many necessities man is compelled toward society.³ We can do very few things alone; and besides those things which individuals can furnish to individuals, there are many things which must be procured for us only by united forces. Thus security, the perfect education of offspring, and almost whatever good can be devised—at least if you require some abundance of the good. Add that the assistance of other individuals outside society would not be at hand except *per accidens*, while man especially desires to dismiss anxious solicitude. Come now: the continual necessity of mutual and common work, besides the lasting period which must be expended upon several ends, demands a stable, not a momentary, communication of this kind.

³ In this manner we briefly comprehend and expound the arguments of the Philosopher and the Angelic Doctor.

What of the fact that we are pressed by so great a necessity for society that from the first beginning of life we find ourselves constituted in domestic society?

2. That institution also is shown to be natural in which alone this social communication is had perfectly in its genus. But civil society is of this kind. Therefore.

For nature tends *per se* toward the perfect. Hence not only that society is to be called natural by which social communication is procured in some manner and, as it were, inchoatively, and the poverty of individuals is supplied, but especially that in which each is obtained more fully and in a certain manner perfectly.

But now, let civil societies such as are presented to the eyes be considered. They perfect families and municipalities, and are broader, stronger unions which are not further perfected *per se*. We say *per se* lest we exclude a new perfection which, according to the degree of civil culture, international society can bring. In them there is discerned a certain unlimited, uncircumscribed acquisition of goods, whether you regard the genera of goods or the degree in which they are procured. That is, there first occurs the full sufficiency of goods which lesser societies lack, indeed which they necessarily must lack, since perfect social communication demands a multitude of men and a complex variety of relations, all of which cannot be governed by the private orders of a family or neighborhood. Hence both by common usage and already according to the mind of Aristotle,⁴ the State is called a perfect society; and Leo XIII says that this is its end: that it procure a perfect sufficiency of life.⁵

⁴ *Politics*, bk. 3, chap. 6.

⁵ Encyclical *Immortale Dei*, November 1, 1885.

Then this also already demonstrates that it is a natural institution: that everywhere, besides societies which are completed by private relations, there is seen a greater and more perfect union of men with public power.⁶

⁶ When many families have begun to inhabit the same place, they have need of civil union and command so that they can dwell there together peacefully and securely. Hence it can probably be said that by natural law itself, which efficaciously wills the peace and common good of men, they are commanded to enter civil union unless they prefer to depart for diverse places, so that the State is constituted by no other consent than that by which they continue to live there together. Cf. Cathrein, *Moral Philosophy*, no. 500, against many Scholastics who required at least a tacit pact in order that a society be joined. But in reality, without consciousness of an obligation, by an evident consideration of necessity or utility, very many will obey, and the few who wish to resist the same cannot impede the good of so great a multitude. Hence they must yield their place or consent to the multitude, whose right it is to establish public societies.

Article II. On the End of Civil Society and the Common Good

554. What the end is. By its very origin, the State is shown to be directed toward the common happiness of men. For the cause of the union is the effort, by joined forces, to supply the poverty which is discerned in every order of goods. But since beatitude consists in the satiating enjoyment of every good, the common endeavor or conspiring to procure an abundance of goods of every genus by which approach to a satiety of this kind lies open as widely as possible is to be called an endeavor to procure happiness.

The same appears from the fact that by common society men seek perfection, or the remedy for common imperfection; but happiness is inherent in perfection.

In the merely natural order, these things would have to be said without exception. But now account must be taken of the divine condescension by which man is born for a supernatural end, for whose common procurement another perfect society distinct from the State—that is, the Church—has been appointed. Therefore, sacred things having been excluded, the end of civil society is circumscribed by the positive counsel of God, and no longer comprehends except inferior goods, or goods of this world, yet to be procured in such a way that they can assist the supernatural end, much less be an obstacle to this end. For there is no good of men except that which can be referred to the supreme end or good.

555. In what manner can temporal happiness be called the end of civil society?

1. Insofar as the present sufficiency of goods and the very preparation for the future life already bring the happiness which can now be possessed—that is, the happiness of this time—the solemn saying by which temporal happiness is called the end of the State is most true. “Having arisen,” thus Aristotle, “for the sake of living, it remains for the sake of living well.”¹

¹ Γενομένη μὲν οὖν τοῦ ζῆν ἕνεκεν, οὕσα δὲ τοῦ εὖ ζῆν (*Politics*, bk. 1, chap. 2, no. 1).

2. Insofar as only the things of this life can be administered by political power, and religious and sacred things do not pertain to it, this is not established until after the divine constitution of the Church has been proved. For a right disposition toward the future life is a part of temporal happiness itself; citizens, through a perfect society, universally seek a sufficiency of every good for procuring which individuals have little power; they labor under this need in sacred things no less than in profane; by general usage, non-Christian nations commit decrees concerning religious things to public power. All these things show that solicitude for the future life is not foreign to the State. Hence St. Thomas² does not hesitate to write: “If indeed this end—divine enjoyment—could be attained by the power of human nature, it would be necessary that it pertain to the office of the king to direct men toward this end.” And Suarez:³ “The nature of men demands that it be gathered into one political body of the commonwealth; but this political body ought to be ordered principally to the worship of God.”

² *On the Government of Princes*, bk. 1, chap. 11.

³ *On the Sacraments*, vol. 1, disp. 73, sect. 4.

It cannot therefore be said that a twofold rationale of perfect society proceeded from nature itself, of which the one would govern divine things and the other human and present things. Rather, certain genera of things which in the natural order would have pertained to the State are now reserved to the Church by the positive will of God.

From this it is also more easily explained how, with non-Catholics, the controversy concerning the legitimate province of the Prince⁴ is almost inevitable and insoluble, and why you cannot suitably define that province from natural reason alone.

⁴ We call *Prince* the one who possesses the supreme affairs, whether he be one person, several, or many.

556. What the common good is. If you consider that an end is a good which is presented to the will, you will perceive that the common good is the very end established beforehand for any society, to be attained by common work. Thus, in a society of merchants, the common good is the profit sought from the business undertaken. And in the State, which is formed to supply in a general

manner the impotence of individuals and lesser groups, the common good will embrace: **a)** First, those things which would be lacking to all unless the State existed: public peace, interior and exterior security; **b)** Every genus of assistance to be granted according to the faculty which is at hand and the degree of necessity, with the rationale of distributive justice observed. According to this, the more excellent good is to be preferred to the lesser; and, in an equal society such as ours, that which directly or indirectly profits more persons is to be preferred to the utility of fewer.

Moreover, the common good and the good of several differ formally, although materially they can be the same. For a good which several persons individually have procured for themselves will pertain to several, yet will not be a common good. But if, by joined work, something is attributed to one person according to the end of the society—as if an annual sum of money were established for one widow of a citizen who deserved well—this prestation will be, under a diverse respect, the good of one and the common good. But where, by common effort and according to the legitimate rationale of the State, some good is made that of several, the good of several and the common good will be materially the same. But the common good and the good of the assembled multitude as such differ in no way, although individual procurations do not affect the whole multitude.

Article III. On the Means to the End and Public Power

557. The general norm. The difference between a natural society and artificial societies is that men who found the latter sometimes fail in strength or in will itself, and thus not rarely strive toward an arbitrary end with unequal effort or means. God, on the contrary, as the author of nature, cannot fail in granting the means necessary *per se*. Hence this general norm can be established: *Whatever is required per se for the end of the State inheres per se in the State; nor is there another rationale available for demonstrating the various rights of the State, or rights ordered to the State.*

558. The origin and office of sovereignty. 1. By this requirement of the common good it is proved that the sovereignty of civil society is divinely sanctioned,¹ and those things which a legitimate ruler can or cannot do *per se* are adjudged. This power is called public, since it rests upon no private relation and has been granted for governing the people. Accordingly:

¹ By the French word *State* is meant the same thing that in Latin is called *Res publica* [commonwealth], or more often the whole civil hierarchy.

a) The Prince can, because the common good demands it, make acts of the various virtues obligatory, establish rights and duties, settle controversies by his judgment, and fortify his precepts with a sufficient sanction. This is jurisdiction.

b) Because public order is connected *per se* with the congruous vindication of offenses, he will also be able directly to intend the death of the guilty person, if a sanction of this kind should seem necessary for defending public order.

But because there is no connection *per se* between the common good and the death of an innocent person, it will not be lawful to kill an innocent person even for the safety of the kingdom.

c) Because the happiness of men is contained not only in security from enemies and in interior peace, but also denotes a positive abundance of goods, it is not sufficient for the Prince to protect rights; rather, he ought positively to assist in promoting every good. St. Thomas elegantly comprehends this

thus: The Prince ought to take care that he **establish** in the multitude a good life, which consists in the unity of peace, direction toward good, and a sufficient abundance of things necessary for living well; that he **preserve** it when well established, overcoming the causes of ruin which threaten from external enemies, from malefactors, or from the very mortality of men duly discharging offices; and that he **promote what has been preserved toward better things** by correcting, supplying, and perfecting. (Cf. *On the Government of Princes*, bk. 1, chap. 15.)

Therefore, those are deceived who attribute to the Prince these parts alone: that, after the rights of citizens have been suitably composed among themselves, he render the citizens secure from internal enemies. This false rationale of the State is called *Rechtsstaat* [juridical State]. First proposed by liberal economists and admitted by Kant, it had its most absolute defender in von Humboldt.

d) But because private rights—for example, the rights of parents over children, of an owner over things, and of spouses over one another—are constituted by nature itself for the common good, their violation cannot conduce to the common good; hence public power ought to abstain from usurping private rights.

e) And because only one who is weak or incapable is to be assisted, only those goods which cannot be procured by private effort are to be procured publicly.

Thus we depart from those who expect almost everything from public power.

Then also because from the natural end of the State the genuine functions of the Prince can be derived only generically and *per se*. And indeed history demonstrates that different things have been permitted to public power in different States.² Therefore, unless you wish—which is exceedingly difficult to suppose—to condemn as contrary to nature institutions which have prevailed for a long time and peacefully, it remains that you attribute no slight authority to a positive compact of men, express or tacit, for enlarging or restricting the functions of public power. And in this manner, in our State, by express law the State is prohibited from furnishing several things which it could and ought to furnish *per se*; for example, it must grant complete liberty to profess opinions, protect not one religion but several, and so forth. For the rest, what the rights and privileges of local groups are; how far citizens can exercise censure of rulers, send secret letters, and be immune from personal coercion; in what manner the Prince can command, judge, and punish—whether only in writing and by general decrees, or also by particular precepts issued orally—you will find established differently in different places according to received custom.

² Thus the Greeks wished one education of children to be common to all, the Romans did not (cf. Cicero, *On the Commonwealth*, bk. 4, chap. 3), and Catholics reject it.

559. Concerning the first subject of power. 1. “All power is from God,” and it does not take its *first* origin from some delegation by which citizens, by consenting, transfer to one or several a power partly innate in each; rather, when they coalesce into the body of one people, it is granted by God to the governor of the State. Thus all Catholics, against Rousseau.

2. But is the multitude itself, necessarily and always, the first subject upon which power is divinely conferred? Thus C. Bellarmine,³ Suárez,⁴ and not a few Scholastics. This opinion was by no means struck down by the Encyclical Letter *Diuturnum illud* (June 19, 1881), although on its face the Letter may appear contrary.⁵

³ *Controversies: On the Laity*, bk. 3, chap. 6.

⁴ *De legibus [On Laws]*, bk. 3, chaps. 2 and 4; *Defensio fidei [Defense of the Faith]*, bk. 3, chap. 2, no. 7.

⁵ The passage is this: “By this choice (of the multitude) the Prince is designated; the rights of sovereignty are not conferred, nor is command entrusted, but it is determined by whom it is to be exercised.” Yet from the context of the discourse and from other Encyclical Letters it is evident that this alone was proposed by the Pontiff: to set forth the Catholic doctrine concerning public power, which assigns a divine source to that power and denies that it is a revocable mandate of the people; he did not, however, definitely require that authority had not originally belonged to the people, as the subject which first received it from God. Cf. Moulaert, *L’Église et l’État*, pp. 87-92.

We nevertheless do not approve this, both because it is something fictitious—for what is the necessity or opportuneness of that authority in the multitude, which it will immediately transfer to the ruler without any use of its own?—and because it is contrary to history. For, in the primitive age, paternal authority first, then patriarchal authority, gradually and imperceptibly—as was fitting—passed into political authority, for the most part, not to say always. At what moment, I ask, could the multitude then have been conscious that it had any sovereignty to abdicate, when it always seems to have been under the dominion of its head? Add that this explanation was devised on the occasion of the controversy with the Protestants, and especially with King James I, in order to show royal power to be less sacred than pontifical power. Hence the Scholastics, with their minds preoccupied, could easily have been deceived.

If you inquire concerning the mind of the Angelic Doctor, whom, as commonly happens, the opposing parties claim as their own, we think the following should be said briefly.

a) No passage is adduced in which he is shown certainly to favor the tenets of the Scholastics concerning a tacit pact by which the multitude delegated to the Prince a power previously possessed by itself. Words are indeed brought forward by which the Prince is said to bear the person or act in the place of the multitude; but these, or similar words, do not of themselves prove authority delegated by the multitude. Thus a guardian acts in the place or bears the person of a ward; yet he received no authority from the ward. But because the commonwealth is the affair of the people, it would certainly be administered by the common consent of all if power were not required, according to that saying of St. Thomas:⁶ “To order toward an end belongs to him whose proper end it is.” Hence he who is Prince always acts in the place of the multitude and conducts affairs in its name, insofar as he acts for the incapable multitude and administers the commonwealth, but by no means insofar as he received power from the multitude itself.

⁶ I-II, q. 90, art. 3, corpus.

b) Indeed, in the very passages from which the supporters of the Scholastic doctrine argue, St. Thomas seems contrary to that opinion. Otherwise, in I-II, q. 90, art. 3, after he had said, “To order something toward the common good belongs either to the whole multitude or to someone acting in the place of the whole multitude, and therefore to make a law belongs either to the whole multitude or to a public person,” it would have been natural for him to add “delegated by the multitude,” whereas he now completes the sentence with these words: “or it belongs to the person who has care of the whole multitude.” And in I-II, q. 97, art. 3, ad 3, he affirmed concerning every multitude, and not only that which he calls free—that is, one employing a democratic government—that a law cannot be enacted by the Prince “except insofar as he bears the person of the multitude.”

c) But in *On the Government of Princes*, bk. 1, chap. 6, he has statements which cannot be reconciled with the tenets of the Scholastics. For there, treating the question of expelling a tyrant,⁷ he openly grants to a multitude which has bound itself to a king by some pact, even a perpetual one, a certain public authority by which it can expel the tyrant as an unfaithful king. Therefore, since in the doctrine of the Scholastics every multitude is bound by a pact, he ought to have permitted every multitude what he now openly declares to be lawful only for some.

⁷ Observe that St. Thomas resists the expulsion of a tyrant less severely than some have thought or even written. The said sixth chapter of the first book must certainly be consulted.

Add that when the Holy Doctor discusses the various governments expressly in the same work, bk. 1, chaps. 1, 2, and 12, he says not a word concerning the popular origin of monarchical government to confirm the doctrine of the Scholastics.

3. Must some personal and unique fitness sometimes be adduced as the formal cause of legitimate command? Thus many today, whether they propose this explanation as universal or merely place such fitness among the various causes by which the subject can be designated. (Thus Fr. Cathrein, no. 504.)

But the explanation of the latter opinion is inadequate when the question concerns a formal rationale which can apply to all cases. If you maintain the former, does it not appear fictitious? Is it not probable that often, although a greater ability on the part of several was passed over, supreme power fell to a less excellent ruler, indeed one less willingly accepted by the multitude—especially if you consider not only the first origin of society, but the innumerable cases in which, after the line of rulers was interrupted, public power had to be conferred as at the first origin?

4. We respond better, as we think, and at the same time more plainly and adequately, by saying that the original fact by which a true title is conferred is peaceful occupation.

This is commended by: **a) The analogy of right.** In this manner a thing belonging to no one passes into the possession of a definite owner. Now, although public power is to be exercised not for one's own utility but for the common utility, it is nevertheless possessed as a certain property.

Otherwise, how would an offense against commutative justice be committed by expelling a king? This is certainly explained with greater difficulty in the other tenets. **b) The very argument which Suárez uses.**⁸ “Nor is there any rationale,” he says, “why this (political jurisdiction) should be attributed by the nature of the thing to these with respect to those, rather than conversely.” Therefore, we shall conclude thus: in the first instant of reason it belongs to no one, and lies open for occupation. But he who has occupied it peacefully has introduced between the thing to be possessed and himself a certain relation on account of which he is to be preferred to others. Yet you would infer altogether wrongly, from the fact that the thing stands equally with respect to all, a positive community of the thing. As is said of corporeal things, it belongs negatively to all who can occupy it, and becomes positively that of the first occupant. **c) Facts.** As often as someone reigns, he is said to command legitimately unless an unprescribed right of a prior Prince stands in the way. This prescription, moreover, confirms that the cause of possessing political power and that of dominion over things are similar. At the same time, by this doctrine it is easily explained why in the beginning the one who was patriarch became, as if necessarily, Prince or King: for he was placed in such a

position that the first occupation had to fall to him. But if one person is fit, he also will first occupy the supreme power. Thus the other opinions can be brought back to a certain agreement.

⁸ *De legibus* [*On Laws*], bk. 3, chap. 2, no. 3.

For this first occupation, since free persons are to be ruled, a certain tacit assent is required on the part of those saying or doing nothing to the contrary; but this negative approval, which differs very greatly from a positive vote,⁹ pertains rather to the material or quasi-physical taking, and is not the formal cause of a just title. Thereafter, according to the various circumstances, one or several will occupy it, absolutely or in a more tempered manner, leaving a part to counselors, or to the people, or to the greater part of the votes.¹⁰

⁹ Even when order is restored after affairs have been disturbed, what else is observed? One person or a few occupy the commonwealth; in the manner which pleases them, they convoke assemblies in which the votes of some, not of all, are sought, so that most are not asked about their wishes, as though they stood outside the commonwealth.

¹⁰ We speak thus because, when supreme power rests with a group or the people, it seems in reality to pertain to the greater part of the votes—which certainly will be composed in one manner in one case and in another manner in another—rather than to the group itself.

Article IV. On the Members or Associates of the Commonwealth

560. Excessive use has been made from ancient times, even by the Philosopher, of the comparison of the parts and the body, so that he contended that, when the State perishes, individual men and families remain only equivocally,¹ as though they had begun to be subject to another substantial being. The Scholastic Doctors perhaps imitated this too much as well. For if this rationale of parts were pressed, why could the State not make individual men entirely subject to itself? Why, in a necessity, could it not even pour out the life of innocent persons, just as it is lawful to amputate members to save the body? Moreover, no rationale is contained in a comparison.

¹ *Politics*, bk. 1, chap. 3, no. 4.

But it must be said that human persons as such do not take the place of parts, but merely place in the midst of society both their necessities, that they may be supplied, and their faculties, that these may receive the common use which, after an equitable distribution of burdens has been made, the common good demands and the necessary relation to their proper end permits. Nor is the faculty by which public power can set aside certain private rights on account of the common good derived formally from the rationale of parts, but merely from the fact that civil society can scarcely subsist without such subordination and, as we were saying, nature, which willed society to exist, willed it to be furnished with the requisite means.

Article V. On the Worst and the Best Commonwealth

561. The commonwealth is corrupted when it is administered not for the common good but for the private good of those governing: whether of one, as in tyranny; of a few, as in oligarchy; or of many, for example, of a dominant faction, as in pseudo-democracy.¹ Concerning this matter St. Thomas offers this excellent statement: the government of a tyrant is the worst of all because, “since the many are nearer to the whole than the few, and the few than one alone, there is the greatest departure from the common good in tyranny,” in which the good of one alone is sought.

¹ St. Thomas uses the word *democracy* to designate this, while a rightly constituted popular State is distinguished by him with the name *polity*.

562. Concerning the best commonwealth philosophers have disputed at length, from the ancient Greeks down to the socialists of today. Innumerable manners of speaking seem capable of being reduced to these few genera.

1. Either the commonwealth is proclaimed the most excellent of things: whether you make the utilities of the citizens and the State coincide, or consider in the State a certain most noble Being by which every virtue and every progress is informed. The Greek philosophers followed the former rationale: they commended even the heaviest yoke of the State to private persons as the happiest condition, taking care only that at the same time the greatest equality be preserved among citizens. The narrow boundaries of the States and the small number of those who were counted among the citizens in Greece seem to have contributed not a little to this persuasion. Therefore, certain worshipers of the State think very wrongly of transferring these things to our extensive commonwealths. The other rationale pleased several philosophers of Germany, who said that all things were to be devoted to this abstract good. Thus Hegel² and his disciples. The fictitious rationale of a moral person, as is probable, contributed not a little to this error.

² *Werke*, vol. 8, p. 258.

2. By a contrary rationale, others, who favored the tenets of the economists or of Rousseau and Kant, see in the public action of the State rather a necessary evil so that the rights of several can subsist. Therefore, they reduced the functions of the Prince, so that they referred everything back to the protection of rights. Yet, by a strange fact, they not rarely permitted public oppression in moral and religious matters, while in the economic order they allowed all things to remain at the discretion of private persons.

3. To the third genus we ascribe all those who, more wisely, hold that the rationales of the citizens and of the commonwealth are conjoined *per se*, provided public power is contained within its proper limits and injuries against citizens and families—toward which ambitious governors of the State, by their nature, easily incline—are prevented by the very constitution of society and the virtue of the citizens.

The Roman commonwealth already approached this rationale to some extent, perhaps on account of the very magnitude of the empire and the various peoples of which it consisted.³ The same also seems more conformable to Germanic customs, and is promoted especially by Catholic principles concerning the rights of the Church, plainly distinct from the State, and the supernatural dignity of men.

³ Hence Cicero seems to have disputed concerning the commonwealth far better than the Greeks.

But, what must not be ignored, only in the more recent age, in the fifteenth and sixteenth centuries, did theologians begin to write and dispute accurately concerning political rationales, so that in this matter we rely less upon the support and authority of the Scholastics of the Middle Ages.

But leaving this general rationale, the following is of the greatest importance for daily use: contrary to the opinion of many, especially haters of the Church, who always strive to enlarge the province of supreme power and do not permit the administration of localities and regions to be possessed of its own right, this must be firmly held: a State is not to be judged better because its public power can

and *per se* does more things; rather, that commonwealth is preferable *per se* which has known how to stimulate more the action or endeavors of municipalities, associations, and citizens.

For this rationale of the State is more congruent with its natural end, which does not tend to suppress the actions of individuals but to perfect them, so that they can now avail for more things. This, moreover, makes citizens better and happier. For where almost all things are furnished by public action, liberty is diminished, since all depend upon public power in more matters, and those who by their very office are under the dominion of the rulers increase in number—I mean officials (*fonctionnaires*); virtue is diminished, since citizens, trusting in public providence, become more idle and inert; life is diminished, for it implies spontaneous movement, whereas here they learn to attempt almost nothing, but to expect from public power the things to be used for their own advantage. And while other undertakings lose esteem, competition for offices and ambition increase; hence party passions are multiplied and become fiercer, and public peace itself receives no slight detriment. Then, things undertaken publicly are done at greater expense and with the danger of a more serious error, since the mistake of the one directing can then ruin everything. Thus, while the State prescribes rules for the instruction of youth, whatever is defined erroneously—as we know has happened not rarely—infects the instruction of all youth, and, with emulation suppressed, no experience is had of another rationale which is perhaps better. What of the fact that, while the Prince is distracted by many unnecessary cares, he can be less diligent in administering his proper province? But if stimuli are added to the endeavors of private persons, citizens will rejoice more in the goods possessed as having been acquired by their own industry, and will become more prepared to administer the commonwealth itself well and to bring assistance to the more fit rulers.

Nor should you say that the more one a society is, the better it will be.

For this can be said only of that unity which is adapted to the nature of the thing. Hence the unity of concord is to be desired, by which all are well affected toward the common good; it is also to be desired that those things which are to be done by all as a whole be effectively commanded by one. But, with the administration of the commonwealth remaining unimpaired, it is by no means to be desired that private affairs be unable to be freely administered by private persons or municipal affairs by municipalities. Indeed, on the contrary, as Aristotle had already observed, the greatest unity would destroy the State, since a State implies families and a multitude, which would perish if they were reduced to one man.

Moreover, the present rationale of States, in which supreme power is so often in the power of a faction, deters us still more from commending a government under which all things would be subject to tyrannical power.

This principle, therefore, is to be employed: when the matter concerns things truly common, such as public peace and the administration of justice, the Prince must have the power to establish or govern them effectively; but if the matters are of a less general order, for example domestic matters or particular administrations, families are to be presumed more fit to administer them, and public action, unless it is demonstrated to be necessary, is not *per se* legitimate or salutary.

563. Although we have praised the political reflections of the ancients little, nevertheless it is pleasing to borrow from Cicero the following things excellently thought and said.

He thus elegantly depicts the end of the State:⁴ “For as a favorable course is proposed to a helmsman, health to a physician, and victory to a commander, so a blessed life of the citizens is proposed to this governor of the commonwealth: that it may be firm in resources, abundant in means, ample in glory, and honorable in virtue; for they wish him to be the perfecter of this greatest and best work among men.”

⁴ *To Atticus*, bk. 8, chap. 11.

Concerning the popular vote he judges thus:⁵ “It must always be maintained in a commonwealth that the greatest number not have the greatest power.”

⁵ *On the Commonwealth*, bk. 2, chap. 22.

He rejects the tyranny of the people in these words:⁶ “When affairs are said to be conducted through the people and all things to be in the power of the people; when the multitude takes punishment from whomever it wills; when they drive, plunder, hold, and dissipate whatever they will—can you then, Laelius, deny that this is a commonwealth, since all things belong to the people, because indeed we wish a commonwealth to be the affair of the people?” Then Laelius: “Indeed, you would more readily deny that this is a commonwealth than any other.... Nor do I see how the name of commonwealth appears more in the dominion of the multitude, because, first, to me there is no people, as you defined it most excellently, Scipio, except one which is held together by a consensus of right; but that assembly is as much a tyrant as if it were one man, and indeed more loathsome, because nothing is more monstrous than that beast which imitates the appearance and name of the people.”

⁶ *On the Commonwealth*, bk. 3, chap. 33.

Finally, let him be heard concerning the variety and harmony of orders:⁷ “For as in stringed instruments or flutes, and as in song itself and voices, a certain harmony must be maintained from distinct sounds—a harmony which educated ears cannot endure when altered or discordant—and as that harmony is nevertheless rendered concordant and congruous by the moderation of most dissimilar voices, so the State, from the highest, lowest, and intermediate orders, as from sounds, harmonizes by a measured proportion through the agreement of those most dissimilar; and what is called harmony by musicians in song is concord in the State, the closest and best bond of safety in every commonwealth, and it can in no way exist without justice.”

⁷ *On the Commonwealth*, bk. 2, chap. 42.

Appendix: Motu Proprio of Our Most Holy Lord Pope Pius X — On Christian Popular Action

I. CERTAIN THINGS TO BE NOTED CONCERNING THIS DOCUMENT

564. After our dissertation on Christian Democracy had already been printed, there was promulgated, on December 18, 1903, a *Motu Proprio* of Our Most Holy Lord Pope Pius X, in which, in order to strengthen the concord of Catholics in action, he collected from three Encyclical Letters of Leo XIII and from an Instruction of the Congregation charged with Extraordinary Ecclesiastical Affairs the common principles which must be properly maintained by all, and confirmed them anew by his own authority. It is useful to reproduce these most prudent norms here, in the Italian language in which they were published and—if you except a few things—with the French translation as it appeared in the periodical *Revue Théologique Française* (January 1904).

But first a few things seem to require notice.

565. Concerning the force of the *Motu Proprio*. From the occasion for writing, which was supplied by dissensions that had arisen in Italy, and from the Italian language itself, it is sufficiently evident that this syllabus was composed chiefly for the use of Italians. Nevertheless, it contains an authentic repetition of documents which are for the most part general even formally, so that by its efficacy it avails to direct Catholics throughout the whole world.

Yet this virtually general force is not, in turn, to be understood as though the evils which the Holy Pontiff proposed to meet threaten or have prevailed everywhere among the nations, or as though in the selection of the articles the principal consideration was not the circumstances of Italy.

566. Concerning its end. Norms are prescribed for the Catholic action of the laity. From this consideration it is more easily perceived why those who wish to obtain its praise must observe strict obedience toward the Bishops and the ecclesiastical hierarchy.

567. Concerning its correct interpretation. Since the Holy Pontiff openly professed that he wished to present a certain summary of things which had previously been decreed, the *Motu Proprio* is to be interpreted so that it is seen to confirm these things, and by no means to suppress or change them. Whatever was established from the earlier documents remains ratified and firm; and the brief rules of the most recent decree are to be understood in the manner in which they are proposed more explicitly in those documents.

Editorial note: The source prints a parallel French translation of the Italian passages on the following pages. Because it duplicates the Italian text, it is omitted here in accordance with the project instructions. Unique citations found only in the French text are retained.

568. What if it is silent concerning certain things? Nor is it lawful to use the *Motu Proprio* to neglect the precepts of the earlier documents which are passed over here in silence. For the Holy Pontiff did not intend to recount everything.

Yet the fact that nothing is said concerning the family wage seems to add strength to our persuasion according to which we judged that this question was not formally resolved by the Letter *Rerum novarum*.

569. Concerning the political counsels of the democrats. Take care lest the statements of no. XIII of the *Motu Proprio* give an occasion for error and for forbidding democrats, with excessive severity, every use of political arts. For we are referred back to the Instruction of the Sacred Congregation charged with Extraordinary Ecclesiastical Affairs which was sent to the Bishops of Italy on January 27, 1902. Now that Instruction, no. I, proposes more explicitly in this manner the doctrine of the Encyclical *Graves de communi* (January 18, 1901) concerning our subject:

“Christian-democratic institutions, whatever their character may be, must be considered solely as manifestations of Christian popular action, founded upon natural right and the precepts of the Gospel. They are therefore not to be regarded as means directed toward political ends or destined to change any form of government.... This object (the social question) refers, it is true, to external goods, but above all it refers to religion and morals; and it is also naturally connected with the norms of civil legislation, so that, in the end, it generally concerns the rights and duties of all orders.... From this it follows that in Christian-democratic programs, conferences, and newspapers, all questions which aim at the triumph of justice and the practice of charity in favor of the people, and which constitute the true object of Christian democracy, can be treated.

“Christian-democratic newspapers can also give news and judgments concerning political facts and opinions, but without claiming to speak in the name of the Church or to impose their own opinions in a matter of free discussion, as though those who thought otherwise were not sincere Catholics. Nor is it enough that Christian democrats not speak in the name of the Church when they treat merely political matter; it is also necessary that in Italy they abstain from participating in any political action.”

To one who weighs these things, it will easily be evident that no conclusions other than these can be gathered from these documents: **a)** Christian-democratic action, as such, does not contain *per se* any political plan. **b)** No political end ought to be intended by this action, especially that end by which an attempt is made to change the form of the commonwealth. **c)** The political action of Christian democrats,¹ if they wish to exercise any, is not to be exercised in the name of the Church, as though it were forbidden to Catholics to think otherwise than they do concerning the commonwealth.

¹ I say, of the democrats. For four things are to be distinguished in this matter: what democrats do under any title, and what they do as democrats, or insofar as they carry on Christian-democratic action; then democratic action for a political end, and political action for a Christian-democratic end.

But by the same documents Christian democrats, if you except Italy, are by no means commanded to abstain from political pursuits, especially since by political action they can promote the good of the people itself, provided they use legitimate methods and do not imprudently disturb the necessary concord of Catholics. (Cf. what we have written more fully in our commentaries on the Encyclical *Graves de communi*, p. 24.)

II. POPE PIUS X — *MOTU PROPRIO*

570. From Our first Encyclical to the Episcopate of the world, echoing what Our glorious Predecessors had established concerning the Catholic action of the laity, We declared this undertaking most praiseworthy, and even necessary in the present conditions of the Church and civil society. And We cannot but praise highly the zeal of so many illustrious persons who for a long time have devoted themselves to this noble task, and the ardor of so much chosen youth which has eagerly

hastened to furnish its work in this matter. The Nineteenth Catholic Congress, recently held at Bologna and promoted and encouraged by Us, has sufficiently shown to all the vigor of the Catholic forces and what useful and salutary things can be obtained among believing populations when this action is well regulated and disciplined, and when union of thoughts, affections, and works reigns among all who take part in it.

Yet it causes Us no slight regret that some disagreement which arose among them has stirred up controversies which are unfortunately too lively and which, unless checked opportunely, could divide those same forces and render them less efficacious. We, who recommended above all the union and concord of minds before the Congress, so that what pertains to the practical norms of Catholic action could be established by common agreement, cannot now remain silent. And since divergences of views in the practical field very easily lead into the theoretical field, and indeed must necessarily have their fulcrum there, it is necessary to strengthen the principles by which the whole of Catholic action must be informed.

Leo XIII of holy memory, Our illustrious Predecessor, traced out luminously the norms of Christian popular action in the distinguished Encyclicals *Quod Apostolici muneris* of December 28, 1878; *Rerum novarum* of May 15, 1891; and *Graves de communi* of January 18, 1901;² and also in the particular Instruction issued through the Sacred Congregation for Extraordinary Ecclesiastical Affairs on January 27, 1902.³

² *Revue Théologique Française*, vol. VI, p. 65.

³ *Ibid.*, vol. VII, p. 210.

And We, who no less than Our Predecessor see the great need for Christian popular action to be rightly moderated and conducted, will that those most prudent norms be observed exactly and fully, and that no one therefore dare to depart from them in the least. And so, in order to keep them more easily alive and present, We have resolved to gather them as in a compendium in the following articles, as the Fundamental Regulation of Christian Popular Action, reproducing them from those same Acts. These must be the constant rule of conduct for all Catholics.

FUNDAMENTAL REGULATION OF CHRISTIAN POPULAR ACTION

I. Human society, as God established it, is composed of unequal elements, just as the members of the human body are unequal. To render them all equal is impossible, and the destruction of that same society would result from it. (Encyclical *Quod Apostolici muneris*.)

II. The equality of the various social members consists only in this: that all men draw their origin from God the Creator; have been redeemed by Jesus Christ; and must, according to the exact norm of their merits and demerits, be judged by God and rewarded or punished. (Encyclical *Quod Apostolici muneris*.)

III. From this it follows that, in human society, it is according to the ordination of God that there be princes and subjects, employers and proletarians, rich and poor, learned and ignorant, nobles and commoners; all of whom, united in a bond of love, are to assist one another in attaining their final end in Heaven and, here on earth, their material and moral well-being. (Encyclical *Quod Apostolici muneris*.)

IV. Man has over the goods of the earth not only simple use, as do the brute animals, but also the right of stable property: not only property in those things which are consumed by use, but also in those which use does not consume. (Encyclical *Rerum novarum*.)

V. Private property, the fruit of labor or industry or of another's transfer or donation, is an incontestable right of nature; and each person can reasonably dispose of it as seems good to him. (Encyclical *Rerum novarum*.)

VI. To settle the discord between the rich and the proletarians, justice must be distinguished from charity. There is no right to a claim unless justice has been violated. (Encyclical *Rerum novarum*.)

VII. The obligations of justice on the part of the proletarian and the worker are these: to furnish wholly and faithfully the work which was freely and equitably agreed upon; not to damage the property or injure the person of employers; in the very defense of their own rights, to abstain from violent acts and never to transform that defense into mutinies. (Encyclical *Rerum novarum*.)

VIII. The obligations of justice on the part of capitalists and employers are these: to render a just wage to workers; not to damage their just savings by violence, fraud, or manifest or concealed usury; to give them liberty to fulfill their religious duties; not to expose them to corrupting enticements and dangers of scandal; not to alienate them from the spirit of family and the love of saving; and not to impose upon them labors disproportionate to their strength or ill-suited to their age or sex. (Encyclical *Rerum novarum*.)

IX. The obligation of charity on the part of property-holders is to assist the poor and the needy according to the evangelical precept. This precept binds so gravely that, on the day of judgment, an account will be demanded in a special manner concerning its fulfillment, according to the words of Christ Himself. (Matt. 25.) (Encyclical *Rerum novarum*.)

X. The poor, in turn, must not blush at their poverty or disdain the charity of the rich, having in view above all Jesus the Redeemer, who, though able to be born amid riches, made Himself poor in order to ennoble poverty and enrich it with incomparable merits for Heaven. (Encyclical *Rerum novarum*.)

XI. Capitalists and workers themselves can contribute greatly to the solution of the labor question by institutions ordered to furnish opportune assistance to the needy and to draw the two classes together and unite them with one another. Such are mutual-aid societies, the many private insurance associations, patronages for children, and above all corporations of arts and trades. (Encyclical *Rerum novarum*.)

XII. Toward this end Christian popular action, or Christian Democracy, with its many and varied works, is especially directed. This Christian Democracy must be understood in the sense already authoritatively declared, which, being most remote from that of Social Democracy, has as its basis the principles of the faith and of Catholic morals, and above all the principle of not injuring in any manner the inviolable right of private property. (Encyclical *Graves de communi*.)

XIII. Moreover, Christian Democracy must never involve itself in politics, nor must it ever serve parties and political ends: this is not its field. Rather, it must be a beneficent action in favor of the people, founded upon natural right and the precepts of the Gospel. (Encyclical *Graves de communi*; Instruction of the Sacred Congregation for Extraordinary Ecclesiastical Affairs.) Christian democrats

in Italy must abstain entirely from participating in any political action, which in present circumstances, for reasons of the highest order, is forbidden to every Catholic. (Instruction cited.)

XIV. In discharging its functions, Christian Democracy is under the strictest obligation to depend upon ecclesiastical authority, rendering full subjection and obedience to the Bishops and to those who represent them. It is not meritorious zeal or sincere piety to undertake even things beautiful and good in themselves when they have not been approved by one's own Pastor. (Encyclical *Graves de communi.*)

XV. In order that such Christian-democratic action may have unity of direction in Italy, it must be directed by the Work of Catholic Congresses and Committees. This Work, by so many years of praiseworthy labors, has deserved well of the Holy Church, and to it Pius IX and Leo XIII of holy memory entrusted the office of directing the general Catholic movement, always under the auspices and guidance of the Bishops. (Encyclical *Graves de communi.*)

XVI. Catholic writers, in everything that touches religious interests and the action of the Church in society, must submit fully, in intellect and will, like all the other faithful, to their Bishops and to the Roman Pontiff. Above all, they must guard against anticipating the judgments of the Apostolic See concerning any grave subject. (Instruction of the Sacred Congregation for Extraordinary Ecclesiastical Affairs.)

XVII. Christian-democratic writers, like all Catholic writers, must submit to the prior censorship of the Ordinary all writings which concern religion, Christian morality, and natural ethics, by force of the Constitution *Officiorum et munerum* (art. 41). Moreover, according to the same Constitution (art. 42), ecclesiastics, even when publishing writings of a merely technical character, must first obtain the consent of the Ordinary. (Instruction of the Sacred Congregation for Extraordinary Ecclesiastical Affairs.)

XVIII. They must also make every effort and every sacrifice so that charity and concord may reign among them, avoiding every insult or reproach. When causes of disagreements arise, instead of publishing anything in the newspapers, they must have recourse to ecclesiastical authority, which will provide according to justice. Then, when reproved by that same authority, they are to obey promptly, without evasions and without making public complaints; except, in the proper manner and when the case requires it, for recourse to the higher authority. (Instruction of the Sacred Congregation for Extraordinary Ecclesiastical Affairs.)

XIX. Finally, Catholic writers, in defending the cause of the proletarians and the poor, must guard against employing language which can inspire aversion among the people toward the higher classes of society. They are not to speak of claims and justice when the matter concerns mere charity, as was explained above. Let them remember that Jesus Christ willed to unite all men by the bond of reciprocal love, which is the perfection of justice and which carries the obligation to labor for mutual good. (Instruction of the Sacred Congregation for Extraordinary Ecclesiastical Affairs.)

We, of Our own motion and certain knowledge, by Our Apostolic authority renew the aforesaid fundamental norms in every part, and command that they be transmitted to all Catholic Committees, Circles, and Unions of whatever nature and form. Such societies must keep them posted in their meeting places and reread them often in their assemblies. We further command that Catholic newspapers publish them in full and declare that they observe them, and that they in fact observe

them religiously; otherwise, let them be gravely admonished, and if, after being admonished, they do not amend, they shall be interdicted by ecclesiastical authority.

Since, moreover, words and vigor of action avail nothing unless they are constantly preceded, accompanied, and followed by example, the necessary characteristic which must shine forth in all the members of any Catholic Work is openly to manifest the faith by holiness of life, purity of morals, and scrupulous observance of the laws of God and of the Church. And this because it is the duty of every Christian, and then also so that “he who is against us may be ashamed, having nothing evil to say of us” (Titus 2:8).

From these Our solitudes for the common good of Catholic action, especially in Italy, We hope, with the divine blessing, for abundant and happy fruits.

Given at Rome, at Saint Peter's, on December 18, 1903, the first year of Our Pontificate.

PIUS X, POPE.

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The index's numbers are the print's pages; each is a link to the passage it cites.

Errata

Page and location	Printed reading	Correction
P. 84, note 3, line 1	“The Belgian Constitution has this, art. 52.”	Correct to: “art. 32.”
P. 107, line 4	“To the obligation by which citizens are bound, from legal justice, of contributing” (<i>Obligationi qua cives tenentur, ex iustitia legali, conferendi</i>).	Correct to: “to the obligation—by which citizens are bound from legal justice—of contributing” (<i>obligationi,—qua cives tenentur ex iustitia legali,—conferendi</i>).
P. 201, line 10	Before EXPERIMENTS	Supply: 3 .
P. 204, note	December 28, 1890.	Correct to: December 28, 1878.
P. 205, line 11	Before “Nor with a better [name]” (<i>Nec meliore</i>)	Supply: 3 .
P. 221, line 32	Chap. 5, v. 5.	Correct to: v. 3.
P. 222, line 5	Chap. 1, v. 18.	Correct to: v. 10.
P. 339, line 12	237.	Correct to: 267 .
P. 353, line 30	I–II, q. 95.	Correct to: q. 96.
P. 378, line 28	Disp. 18, no. 4.	Correct to: disp. 23, no. 4.
P. 381, line 4	“From fidelity” (<i>Ex fidelitate</i>).	Supply: “or religion” (<i>vel religione</i>).
P. 443, line 17	<i>satis usitatam</i> [“sufficiently customary”].	Correct to: <i>satis usitata</i> [“sufficiently customary”].
P. 488, note, line 2	October 25, 1316.	Correct to: October 25, 1317.
P. 521, line 10	295 .	Correct to: 395 .
P. 547, note, line 2	P. 587.	Correct to: 387.

Page and location	Printed reading	Correction
P. 549, line 26	P. 559.	Supply: “or 595, 2nd ed.”
P. 694, line 4	<i>Ecclesiae</i> [“of the Church”].	Correct to: <i>Ecclesia</i> [“the Church”].
P. 701, line 14	<i>cum a catholicis</i> [“with/from Catholics”].	Correct to: <i>cum acatholicis</i> [“with non-Catholics”].