THEOLOGIA MORALIS

Principles — Responses — Counsels

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VOLUME I

Fundamental Theology (1922)

Bruges: Beyaert; Rome: Gregorian University, 1922–1924 · The Latin is in the public domain.
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Theologiae Moralis

Museum Lessianum: Theological Section

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Theologiae Moralis

Principles - Responses - Counsels

Volume I

FUNDAMENTAL THEOLOGY

Firm Charles Beyaert,

Pontifical publishers, Bruges, Belgium.

Rome (19): Gregorian University, Via del Seminario, 120.

Brussels: A. Dewit, Rue Royale, 53.

Tournai: Etablissements Casterman, Rue des Soeurs-Noires, 28.

Paris (6th): Depot Charles Beyaert (A. Giraudon), Rue Jacob, 22.

P. Lethielleux, Rue Cassette, 10.

D. Gabalda, Rue Bonaparte, 96.

1922

Museum Lessianum

Publications directed by Fathers of the Society of Jesus, Louvain.

Ascetical and Mystical Section.

Theological Section.

Philosophical Section.

For editorial matters, address the Secretariat:

11, Rue des Recollets, Louvain (Belgium).

For administration, address:

Messrs. Beyaert, Pontifical Publishers,

6, Rue Notre-Dame, Bruges (Belgium).

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P. Lethielleux, Rue Cassette, 10.

D. Gabalda, Rue Bonaparte, 96.

1922

Imprimatur

Let it be printed.

Carolus Miccinelli, S.I., Praep. Prov. Rom.

Imprimatur

Let it be printed.

Fr. Albertus Lepidi, O.P., Master of the Sacred Apostolic Palace.

Imprimatur

Let it be printed.

Josephus Palica, Arch. Philipp. Vicesg.

Rome, 1922 - Stabilimento Poligrafico per l'Amm. della Guerra.

Preface

The proper character and usefulness of our Moral Theology seem to us to be manifested, or at least intimated, by the very title with which it is inscribed.

For we promise Principles, Responses, and Counsels.

Principles cannot be handed down without an intrinsic examination of causes.

By Responses, cases are to be solved clearly, for the necessary and prudent instruction of practice.

Finally, Counsels are given concerning the better good. Wherefore our solicitude will not be only about weighing sins which are to be avoided; but it will also extend itself to the positive part of Christian justice, to be explained and recommended.

Written wholly after the Code, the book will more easily be accommodated to the present norms of law than treatises which have merely been revised after the Code. That it may serve use the more, it seemed good to set down the usefulness of the argument before chapters or titles; moreover summaries will be subjoined to the individual chapters, which will present a brief repetition of the chapter.

With the kindly work of friends expert in these matters having been brought in, in treatises which must be completed by the ordinances of civil laws, we shall be able, and shall not neglect, briefly to sketch not only Latin law but also American, English, and German law; in liturgical and disciplinary institutes, the historical beginnings of the present discipline and its successive preparations.

The public apostasy of the nations corrupts not only the intellect, but also the morals of men. From the flood of neo-paganism those must be preserved whose light, as the Lord admonishes [1], ought so to shine before men that from their good works the heavenly Father may be glorified.

May it be possible, with the help of God's grace, that this work of ours, such as it is, contribute something to the sublime end of the divine glory!

Rome, on the sacred day of Pentecost, June 4, 1922.

[1] Gospel of St. Matthew, 5, 16.

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Prooemium

Various Matters Concerning Moral Theology — Usefulness of the Prooemium

There is no true science if its object is presented to the mind only confusedly. But a distinct setting forth of the object to be investigated, of the method to be employed, and of the comparison with related sciences, no less than a clear image of the material thing itself to be considered and of its location in space, wonderfully assists both the intellect and the memory.

Article I: Definition of Moral Theology

Moral theology, or practical theology [1], is defined by us as: **The science which, from the articles of faith, regulates for man elevated and repaired his own human acts.**

The definition is explained. a) "Science" signifies the systematic proposition and rational deduction of conclusions from principles known through themselves. But since the principles of theology are not known to us through themselves, but are divinely revealed, theological science is, under this respect, in us only imperfectly and defectively.

Does not this very science, of a diminished name, seem to be lacking in books which omit binding their conclusions to principles by an internal connection, and pursue almost this one thing: that, after various opinions have been cited, they may demonstrate by the enumeration itself which are common, which at least probable?

b) "Which, from the articles of Faith." Articles of Faith, strictly, "are divinely credible things, which both are explicitly revealed and cannot be deduced from others prior to them" [1]. Moreover, in the articles which are referred to use or practice, moral theology finds its first principles and hence its formal object.

The other articles of Faith, that is, the speculative ones, found dogmatic theology. But since each theology, speculative and practical, assumes the articles of Faith as revealed and believed, so that in each there is one ultimate motive of assent, each has the same formal object. Therefore dogmatic theology and moral theology are not to be proposed as two sciences specifically distinct and coming together into one genus, which would be Theology; rather they must be called two integral parts of one divine science.

The matter is otherwise in rational sciences, which are drawn out from first principles known through themselves. Then each set of principles possesses its own proper evidence; the habit of first speculative principles is not the same as the habit of operable principles; a man most apt for metaphysical matters can be found almost unfit for discerning moral matters; whereas all the articles of Faith are believed by acts of the same habit of faith with equal ease or difficulty. Wherefore ethics, or the natural science of morals, differs formally or specifically from theodicy, or the natural science of God.

Nevertheless, since in gathering conclusions we use our own reason, we by no means deny that it can happen, and that the matter is not infrequent, that one who is a distinguished expositor of dogmatic theology may stumble in moral theology.

c) "Regulates." By this word we assign to moral theology its proximate object, which is the scientific proposition of practical dictates or statements. But a practical dictate is a speculative-practical judgment [2] by which pronouncement is made concerning some more general principle or concerning an application to a particular case: that principle is right or perverse; that action must be done, or can be done, or is forbidden.

Concerning a principle, I say, as when it is said that damage unjustly inflicted must be repaired; or when it is denied that dishonest means can be purified by the goodness of the end. Concerning an application, as when it is declared: a precept given in these circumstances is to be executed; such a walk or such a transaction is licit; the usurpation of such a temporal thing is to be marked with the vice of theft.

d) "For man elevated and repaired," that is, for man in his present condition, who, by the gratuitous benefit of God, was called to a supernatural order and end, was miserably cast down from that noble state by the sin of Adam, and finds in Christ, the new Adam, a new Father by whom he is regenerated and is reformed more wonderfully than he had been created. Contrary, therefore, to Ethics, which imagines man as he could have been but never was and never will be, moral theology considers man as he truly is in reality. Thus moral theology alone is the absolutely prior science of morals.

The definition, however, could have omitted express mention of the subject for whom the studies of moral theology were destined. For that subject's being man elevated and hence repaired was already established from the fact that the rules of moral theology were taken from the articles of faith. For articles of faith could have been revealed for no other man than man elevated; practical dictates can be gathered from the articles of faith for no other man than man elevated and repaired.

Our definition, as to the matter itself, is not different from others by which moral theology is said to be the science concerning human acts insofar as they have an order to a supernatural end. Cf., for example, Lehmkuhl, *Theol. mor.*, Prolegomena.

e) "His own human acts," that is, acts which are sufficiently in man's power that practical dictates concerning them may usefully be sought, or, what is the same thing, that they can and ought to be regulated.

Human acts, therefore, are the remote material object of moral theology; human acts to be regulated, or their "regulation," are the proximate material object of the same science.

[1] The very word *theology* for a long time signified various things, for example, Sacred Scripture itself or the divine page. Sources are indicated by de Ghellinck, S.J., *Le mouvement theologique du XIIe siecle*, p. 66.

[1] Desan, S.J., *De Deo*, n. 7.

[2] It is called speculative-practical because it is remotely ordered to practice, and therefore is still speculative, insofar as it does not yet regard an action to be done here and now.

Article II: Moral Theology and the Related Sciences

Prooemium

In what way moral theology is distinguished from the sciences related to it is gathered without difficulty from the definition itself.

It is distinguished from Dogmatic Theology by the difference of the material object, as has been said.

It is separated from Ethics both by its end and by its formal object. For Ethics considers a hypothetical and fictive direction to a natural end; moreover, it employs its principles as evident or demonstrated by reason, whereas moral theology, even when its own principles seem materially the same as those of ethics, assumes them as revealed or confirmed by revelation. And although moral theology itself also makes much use of natural reasoning, it does this only because we know that the supernatural order is not the overthrow of the natural order, but its perfection; so that the inchoate goodness of an action considered naturally cannot be neglected by us, nor can an action naturally evil become supernaturally good.

It indeed cannot be denied that the direct use of the revealed source becomes far less in moral theology than in dogmatic theology; this is sufficiently explained by the very material object of each part of divine science. For dogmatic theology has as its end the scientific exposition of Faith; it proposes truths which, at least for the most part, are inaccessible to human reason, or concerning which definitions of the ecclesiastical magisterium are usually made; then, because it is a merely speculative science, it abstracts from the man who must believe the dogmas. On the contrary, moral theology, since it regulates human actions, can prescind neither from the agent nor from his nature. But the laws of human nature, which are not to be violated, but are fulfilled more sublimely by a more dignified subject, that is, by man elevated, are accessible to reason itself and are not, for the most part, revealed in particular. Wherefore their demonstration enters moral theology itself. Thus many precepts are materially common to the natural order and to the supernatural order. Some, indeed, are proper to the present order of elevated nature; yet these also are observed by an acting man, who, according to the fundamental laws of his nature, must obey every divine law. Wherefore, if revelation proposes new objects to our action, our action always belongs to our nature, sane but normally informed and strengthened by grace. But those objects themselves, that is, dogmas to be believed, sacraments to be administered and received, are, as it were, loaned to moral theology by dogmatic theology. Besides, when it touches an object which is revealed only accidentally, or which is known to reason, then dogmatic theology itself has many things in common with human science. Thus, in the treatise on the one God, dogmatic theology is scarcely distinguished materially from theodicy. But what rarely happens in dogmatic theology is wont to happen in moral theology.

Therefore there is no other science which makes so manifest what we were just recalling: that human nature is by no means destroyed by grace, but is elevated.

There are not a few questions common to canonists and moralists; but canon law directly regards laws, partly divine and partly human, of ecclesiastical society; and it observes human acts, at least exterior acts (of internal acts the praetor does not judge), under the respect of the external forum, or insofar as they agree with or differ from the laws of visible society. On the contrary, moral theology considers ecclesiastical laws only insofar as, by obliging conscience, they become a rule of human acts. Cf. Wernz, *Ius Decretalium*, I, n. 57.

We have deliberately described moral theology in such a way that it would not exclude the ascetical and mystical parts. Can a rule of morals be called complete which neglects more perfect things, and is in no way solicitous concerning the special communication of God with his creature? Indeed, can neglect of the study of the more perfect be composed with perfect honesty [1]? For this reason, in the very title of the present work, we judged that counsels must be added to moral responses. They are indeed accustomed to say that in moral theology, taken more strictly, there is defined what is licit and what is forbidden, while ascetical and mystical discipline are solicitous about perfection. We place the distinction rather in this: that ascetical and mystical discipline are not content with the notion of more perfect actions, but inquire into the ways of pursuing those more perfect things, and thus approach a certain spiritual art.

Ascetical discipline itself, insofar as it is distinguished from mystical discipline, is concerned with the ordinary means of acquiring Christian perfection, while mystical discipline investigates the more sublime and less ordinary ways by which the soul is led to special union with God.

[1] Wherefore rightly and deservedly the periodical booklet *La vie spirituelle*, from its first beginning, vindicated the place of ascetical science in moral theology.

Place and dignity of moral theology. The comparison made also teaches us in what place and rank moral theology is to be put among the sciences.

For it is manifest through itself that moral theology surpasses the human sciences both by its end and by its object.

As to the sacred sciences, the dogmatic part of theological science excels the moral, insofar as it regards higher truths upon which, as foundations, moral theology rests; and it has God, not only, as does every theology, as the subject of attribution (or that to which all things are referred), but also as its principal material object. Yet in a certain respect the practical part excels the speculative, on account of the greater use which it has in the very ordering to the end of eternal life.

To ascetical theology, moral theology more strictly so called is related as a subalternating science, since ascetical theology must borrow its principles from moral theology; yet the end of ascetical theology is accidentally, or by degree, more sublime, at least insofar as it is more directly solicitous about perfection.

Both by its more noble proximate end, by which it intends rectitude before God, and by the source whence it draws its chief conclusions, and by the very breadth and universality of its object, moral theology is more excellent than canon law.

Pastoral theology instructs sacred ministers concerning their duties, and forms the same ministers for rightly undertaking their offices. And because pastoral theology insists upon the very way by which the salvation of souls will be better procured, rather than upon science, it must be called an art, just as ascetical discipline itself. But ascetical discipline makes a man solicitous concerning his own perfection, while pastoral discipline makes the sacred minister solicitous concerning the salvation and perfection of others. Yet neither the duties of pastors nor the rules of prudently administering the sacraments are passed over in moral theology. Wherefore pastoral discipline enters moral theology almost as a part, especially that moral theology which adds counsels to responses, so that it seems to differ from moral theology almost only by a fuller exposition of matters.

Parergon: On the Relation of Juridical Discipline to Moral Discipline

1. We have distinguished juridical discipline from moral discipline; yet we do not want them so separated that we proclaim the jurist released from moral consideration.

But in non-Catholic schools today there are not lacking supporters of a divorce of this kind, which conceives the province assigned to the jurist in approximately this way.

2. To the science of law there are offered for investigation the norms by which the exterior action of men in the society about which the discussion is being made is coercively directed. By these rules the life of the people is in fact imbued, so that their force and efficacy can be measured.

What then will the science of law do? It will try to reduce all the rules concerning individual objects to some synthetic unity, so that by this effort it may arrive at a certain abstract definition which virtually contains the various rules, and from which, consequently, they can be deduced. Thus there will be composed, for example, the abstract notion of the State, of the Family, of Property, such as can be defined in our age in Italy, in France, in Germany, in Europe.

This is the proper work of the jurist. He ignores metaphysical norms as such; he attends only to the vigor which public opinion attributes to them. But positive institutions he judges according to their proportion to the prevailing opinion: he will approve those which agree with it, he will disapprove those which differ from it.

Today all will readily acknowledge that those institutions are mutable and perfectible. Indeed, they think the same institutions are in perpetual motion. But their greater perfection is not to be gathered from some absolute norm to which they become more conformable, but from the fact that they participate in the inclination and tendencies of opinion itself.

Thus institutions which are an image of the prevailing opinion will be proclaimed good by the jurist; but those will be called better which already sketch the image of the opinion soon to come.

Does there exist an absolute norm superior to positive law? Let the philosophers see to that. What is more fitting for such a people? Let politicians effect that. The jurist adheres to the consideration of facts alone.

Indeed, there were once some (rather than there are now) who with Marx denied all force and efficacy of moral persuasions upon juridical institutions. But this historical materialism is refuted by the most manifest facts of every age. It is enough to recall how much the matrimonial regime, for example, has been changed by Christianity.

3. Censure of that divorce. It is certainly in man's power to consider things precisively, and consequently to weigh the relation between institutions and the persuasions of men. And such precision, if it is made opportunely and prudently, can have its political and social utility.

But why the jurist must be content with that inadequate consideration in no way appears, nor is it demonstrated. Who, besides him, will refer the positive institutions of men to the divinely established order theoretically and practically? Since the metaphysical philosopher, occupied with

abstract things, is ignorant of positive institutions as such, if the jurist observes only the relation of facts, no comparison with absolute norms will be made, no effort will be made to attain them practically, and that which is at once the honor and the duty of man will be wholly neglected: namely, that in his private and public action he imitate God.

In what way also will you deny to the jurist that, by the authority which he possesses, he should influence the very persuasions of the people, and thus fulfill his own part in procuring common happiness?

What of this, that from the natural law rules must be supplied for cases which were not foreseen by the human legislator? Moreover, common sense itself cries out that from the same law there are many things in human decrees to be condemned and corrected. By what title are reforms of laws demanded? That injustices may cease; that greater justice may reign. Therefore an absolute norm is invoked by all reformers, so that a certain ideal image of absolute good is set before the eyes of all. If that image were fallacious, if it were a dream without reality, we would be deceived by our very nature.

But he who, without respect to a superior law, proclaims good whatever is received among men, will often praise what is to be condemned, will blame what is to be praised, and thus will become a pernicious sower of error.

4. That a divorce of this kind, by which juridical matters are separated from moral matters, has been devised must be blamed on metaphysical skepticism and the present intellectual anarchy.

The province which, in such a system, is assigned to the expert in law could befit only beings which are subject to a fatal evolution. But it is opposed equally to human psychology and to objective truth. A role diminished and harmful to the common good would be imposed upon the jurist.

5. Therefore it is necessary that we hold these things firmly: every true progress is either required by absolute good, or is desirable according to that good. From meditation on that good there arises a greater hope of true progress. Opinion, however, and common persuasions are only imperfect criteria, in which alone we cannot trust.

Besides, we freely acknowledge this: moral persuasions alone do not avail for having or changing juridical institutions. The force also of economic utility is by no means to be denied. Not rarely it will stand in the way of the better good. And if it favors the moral matter, it is rather a removal of an obstacle than a positive element of progress. This formula can be given: progress is made according to the absolute good to which lower utility does not stand opposed.

But in bringing about the happy advancement of peoples and men, no Catholic will deny that supreme direction is in the hand of God Provident.

Concerning the province of the jurist and the various opinions which have been proposed about this matter, let the excellent work of Professor Francis Geny be consulted: *Science et technique en droit prive positif*, 3 vols., Paris, 1914-1915-1921.

Article III: Sources of Moral Theology

Prooemium

The sources of knowing, from which moral theology must draw forth its arguments, are the same as those offered for use to theology in general.

Therefore the first place is owed to the Word of God, both that which is written and that which has been handed down by mouth.

Then comes the magisterium of the Church, to which the deposit of faith is committed to be guarded and proposed. This is exercised in an extraordinary manner in the solemn definitions of Councils.

Moreover, from the end of the persecutions to the year 1139, or before Gratian, ten ecumenical Councils were held, besides several particular Councils which obtained great authority. For several canons of the Oriental Councils were received universally. "In the Western Church, the Roman, African, and Spanish Councils excel by singular authority, such as the Council of Elvira (300-306) and the Councils of Toledo, likewise the Gallican Councils celebrated in these centuries" (Wernz, *Ius Decretalium*, I, n. 203).

Afterward it is known that ten other ecumenical Councils were celebrated, if you count the Council of Constance, of which the last, the Vatican Council, has not yet been closed.

The same magisterium is exercised in an ordinary manner in common preaching and instruction. Cf. canon 1323.

Then come human authorities. Approved authors together, as Koch astutely observes [1], almost like the Holy Fathers, bear witness to the doctrine of the Church for us, and by their own reasonings and conclusions provide for the advancement of theological science. To desert their unanimous opinion would be rash; while he is secure who follows positions proposed by many notable authors.

Among these authorities, as regards our discipline, St. Thomas and St. Alphonsus stand out. Yet they are in an unequal place and kind. St. Thomas, "the illustrious ornament and light of the Christian world," Leo XIII "declared and established as heavenly patron of all Catholic schools" for "the increase of the sciences and the common utility of mankind" (cf. Lesson of the second Nocturn in the feast of St. Thomas). Therefore his philosophy is especially commended, and his principles are to be held. St. Alphonsus "among the complex opinions of theologians, whether laxer or more rigid, laid down a safe way, by which directors of the souls of Christ's faithful could walk with unoffending foot" (Pius IX, March 23, 1871, cited by Koch, loc. cit.). Therefore his practical prudence is commended and proclaimed. Yet no approval and commendation impose the individual opinions of a most approved Doctor. Indeed, after the Sacred Penitentiary, on July 5, 1831, declared that a confessor who, in the practice of the sacred tribunal of penance, simply followed all the opinions of St. Alphonsus was by no means to be disturbed, and pronounced that a professor who professes the opinions of the same Doctor is safe, it expressly added: "Yet without its being thought from this that those are to be blamed who follow opinions handed down by other approved authors."

And it is far from the mind of the Church that distinguished Doctors should, as it were, dispense later theologians from personal study and labor. Koch opportunely cites this saying from Lacordaire: "St. Thomas is a lighthouse, but must not be a boundary."

Finally, Reason must scrutinize and prudently apply the principles and documents of sound doctrine and philosophy. And it is to be desired that present-day moral theologians restore that splendid method by which the great moral Doctors of the sixteenth century and the beginning of the seventeenth century deserved so well of moral science, and that they not be content with ever smaller handbooks [1], which have nothing in common with the handbooks which the scholastic Doctors of the Middle Ages adorned with the name of *Theological Summa* for the use of students.

[1] *Lehrbuch der Moraltheologie,* Introduction, § 8.

[1] By these words, however, we by no means intend to detract from the merit and practical utility of summaries such as, with no mediocre art, the recent Fr. Arregui, S.J., and other Doctors have composed. But science of the true name cannot be restricted to works of this kind.

Article IV: Method of Moral Theology

Prooemium

That it may deserve the name of science, moral theology is necessarily solicitous concerning the reasons of its conclusions and concerning the principles to which they are referred; that it may be practical, it must translate principles to concrete cases. Therefore no moral theology is conceived which merely exhibits a catalogue of conclusions, or which is occupied solely in discussing principles.

Nevertheless, according to the principal intention, the method is distinguished as positive and scholastic. The former inquires less than the latter into the reason why; it more dogmatically expounds what the latter polemically defends; it cares less about joining truths among themselves and reducing them into unity. The latter strives to connect them scientifically among themselves.

We shall use a method rather scholastic, yet in such a way that we permit a fuller exposition of principles and polemical defense either to other disciplines, for example, moral philosophy, or to special treatises [2] already written by us or to be published.

Moral theology is called remotely practical or proximately practical, that is, casuistic, according as it dwells more upon general principles, or thinks of foreseeing and resolving practical doubts. We shall try to cultivate both kinds at the same time, while after proposing principles we shall not omit to subjoin the principal applications.

Finally, moral theology can be called individual or social, according as it is destined for directing the singular man alone in his private dealings, or is also solicitous concerning man's social duties. And they turn to the fault of not a few who, in our age, have given their work to moral theology, that, being too solicitous about the singular man alone and about domestic society alone, they did not sufficiently study to provide for public society. Therefore we shall by no means put social considerations after the rest.

Concerning method this can be doubted: whether in arguments which also require dogmatic treatment, for example, in the sacraments, it is better to separate moral conclusions from dogmatic discussion, or, on the contrary, whether it is preferable to join both respects, the dogmatic and the moral, in the same school. Each way of proceeding has its own advantages and disadvantages. Simultaneous presentation favors synthetic unity, avoids every repeated exposition, and is also commended by the example of St. Thomas and of distinguished scholastic theologians. Yet again

today, because of many controversies, dogmatic exposition must be much more lengthy than formerly, and it is very remote from moral applications. Moreover, different qualities of mind are required in the school of dogma and in the moral school. Therefore, if one and the same professor is ordered to be at once dogmatician and moralist, there is danger lest, according to his special aptitude, he neglect one or the other part too much, or lecture on it less well.

But it is altogether to be desired that principles which are not so remote from practice be explained solidly together with the conclusions.

A canonical-moral treatment of matters which pertain at once to the discipline of law and to moral discipline also seems to be commended. We shall try to accomplish this in the volume on the sacraments.

To the right method of moral theology this also pertains: that it teach how to use moral or juridical sayings or aphorisms prudently, and that it appeal, in their proper place, to the censures of condemned propositions in such a way that it neither increases nor diminishes their force.

We call "sayings" the various formulas or dictates which are frequently appealed to by writers in order, in few words, either to confirm a conclusion or to solve a knot or difficulty. Some are rules of law; others are philosophical distinctions. For excuse, for example, to what is appeal more often made than to the distinction *per accidens*?

We do not deny the utility of brevity; nevertheless care must be taken lest we increase the force of rules, lest we employ distinctions outside their proper place, and thus lest we seem content with a merely "verbal" solution.

Therefore, concerning the prudent use of sayings, we think these things must be observed.

[2] We have already written questions on religion, on justice, and a work on chastity.

I. On rules of law. We must begin from the wise admonition of the legislator: "A rule is that which briefly narrates the thing as it is. Not that law is taken from the rule, but that from the law which exists the rule is made" (*Digest*, *De regulis iuris* [L, 17], Rule 1).

Therefore they are sometimes called principles, or, at least by philosophical reason, axioms, by a rather improper usage. For principles strictly so called must contain in themselves the reason of the conclusions or corollaries of which they are sources, whereas employed sayings not rarely rest upon a reason extrinsic to them; thus that common saying: in doubt one must answer in favor of the validity of the act. An axiom, philosophically, signifies a sentence whose truth we immediately intuit, whereas several sayings, for example, concerning the privileges of the possessor, need demonstration. Therefore:

1. When the reason of some saying is external to the saying itself, its true reason must be investigated, lest, beyond that reason, we make a fallacious use of the saying.

Let the saying be, for example: "In doubt one must stand for the validity of the act." Since men perform acts, some good, some evil, some valid, some invalid, the truth of the saying is not immediately manifest. Yet the rule must be proved because of these added reasons:

a) Man must employ only that diligence which is human. But it would be inhuman to demand that, without a positive and serious motive, acts once performed should have to be recalled again to the scales. Therefore this first reason already teaches us this correct use of the saying: in negative doubt, solicitude about our past acts can safely be laid aside.

b) In the external forum, matters must often be determined by presumptions. And since acts are for the most part done validly, the presumption by which, at least in the external forum, an act is presumed to have been done validly in doubt, even positive doubt, is just and fair. Yet the force and value of that presumption will vary according to the will of the legislator and according to the efficacy of that will. According to his will, I say. Thus, what before the canonical Code was disputed, the legislator now wills that the presumption for the validity of marriage be stronger than for the validity of baptism. Wherefore, where the baptism of one or the other party has been doubtful, canon 1070, § 2, says that one must stand "for the validity of the marriage until it is certainly proved that one party was baptized, the other not baptized." Yet it reserves the privilege of the faith, because in favor of the faith the same marriage can be held as null [1].

We added "according to the efficacy of that will." For there are acts which the legislator can render certain from doubtful by his will, whereas others are necessarily left in their objective state, notwithstanding the presumption of the external forum. Thus public authority can render the jurisdiction of an inferior certain by supplying the defect. Wherefore use of probable jurisdiction is always honest, since canon 209, in a positive and probable doubt whether of law or of fact, supplies jurisdiction. On the contrary, no will of a human legislator will be able to supply deficient baptism. Hence it will happen that consciousness of doubtful baptism obliges you to receive baptism again under condition, for example, in order to your own eternal salvation, even though, in order to marriage, it is presumed to have been valid.

c) Finally, if we consider an act as the source of obligation, in positive doubt no simple answer is supplied to us by the praised saying. For if your obligation alone comes to be considered, an act concerning whose validity there is positive doubt will bear only an uncertain obligation, which can be passed over. For this reason a private vow whose validity is doubtful is not to be urged. But if the utility of another private man or a public cause intervenes, many other things will have to be considered, which will be weighed in their own place. The case will have been: a doubtful marriage, a doubtful religious profession, a doubtful payment of a debt.

And thus our inquiry has led us to this conclusion: a saying which must be admitted because of a reason extrinsic to itself does not have perpetual use.

2. Other sayings indeed contain in themselves the reason of their truth, but must be completed in order that their use can be prudent.

Thus, once the nature of ordered charity has been seen, it appears true that "charity does not oblige with excessive inconvenience"; but the proportion of inconvenience must be gathered from elsewhere, so that we may prudently judge the inconvenience to be excessive.

3. Other sayings, even when complete, require that attention be given to the condition which is expressed together with them or understood beneath them.

When we say, "In an equal cause the condition of the possessor is better," we enunciate something complete, which is made true from the very nature of possession. Yet it can be doubted, and is doubted, when a cause is to be called equal. And besides, the very principle of possession cannot exert its own proper efficacy unless true possession is had. But possession supposes two persons who can contest concerning a right; it also supposes a fact, or exercise of a right, which exists, or can exist, separated from the right. Thus one man can possess a field of which another has the right of ownership. Now, neither law nor liberty are two persons. But if you take them metaphorically for the legislator and the subject, the subject, in matter in which the legislator is competent, cannot contest with him concerning any right, but is within the decision of the one legitimately commanding. Finally, law and immunity from law either are or are not: a law cannot be conceived which obliges in fact but not in right, or an immunity from law which is at once moral and illegitimate. For this reason, not a few writers who try to solve moral doubts by considering whether law or liberty is in possession use an argumentation which we call futile, because it is fictive. For there is no possession of liberty with respect to the legislator, and the principle of possession occupies its proper seat in the matter of justice. Cf. Bouquillon, *Theologia fundamentalis*, n. 296; De Bock, *Trac. fundam.*, I, p. 280, observation IV.

[1] Cf. what we wrote in *Periodica de re canonica et morali*, X, p. 25.

II. On excuse through "accident." There is very much use and abuse of the distinction between *per se* and *per accidens* in moral matters.

1. First, the twofold meaning of the distinction must be attended to. a) A thing is said to happen *per se* which for the most part, by way of rule, seems to flow as it were from the nature of the thing or from the circumstances; but that is said to happen *per accidens* which occurs rarely, by way of exception. This distinction is useful, because our human providence generally ought not extend itself beyond those things which regularly happen or follow. Which words, for example, are to be avoided as harmful, insulting, offensive; which occasions of sinning are to be held grave or proximate, before experience, are estimated according to that norm. b) By a more philosophical usage, we do *per se* what, by our voluntary causality, we effect or produce; but that happens *per accidens* which, besides our intention, follows because of the intervention of another cause which we cannot impede. Wherefore Almighty God indeed wills some things *per accidens*, but is said to do nothing *per accidens*. Thus, for example, to use the classic example, a commander of an army intends to explode a fortress with instruments of war. With the explosion of the fortress his causality *per se* is ended. But it can happen that, by chance or by the will of another, innocent persons have been shut up in that fortress. The commander, as we suppose, cannot procure that they leave from there or be expelled. The killing of these accompanies the explosion of the fortress *per accidens*.

From the same example it appears that some effect can be called *per se* according to the first signification, which according to the other follows *per accidens*. The killing of the innocent, in the proposed case, follows *per se*, from the circumstances in which the explosion is made, if we attend to the first signification; it follows *per accidens* according to the other signification.

Now to speak of the very frequent excuse: if we wish to avoid fallacy, it will have to be weighed what is held *per accidens*, and at what time of our action.

For *per accidens*, or because of a concurrent cause which is not in my power, some condition required for the very honesty of the action can be lacking, or the effect to which the action has an order; and it can also happen that a new evil effect is added.

In the first case, whether the condition of honesty was lacking *per se* or *per accidens*, the action remains equally dishonest. In the second case the action will preserve its species morally, just as physically.

It is not licit to kill a hare with danger to human life: whether the danger arises *per se* or *per accidens*, that hunt will remain illicit. But that food moderately taken is not digested in the stomach *per accidens* will not morally vitiate the eating. These things must be attended to greatly in the question concerning the use of marriage. Cf. Suarez, *De Legibus*, l. 3, c. 25, n. 12.

Finally, in the third case, which will be proposed more distinctly later, the action will be honest or dishonest according as you have, or have not, satisfied the positive duty of preventing that evil effect from following from your action. The force of that duty is one thing in one matter and another in another matter, and will be weighed in its own place.

III. On proscribed propositions. There can also be an incorrect use of the judgments of the Holy See, especially those by which certain propositions or theses are disapproved.

For in dogmatic theology the various notes with which propositions are branded are accurately distinguished. For they are condemned as heretical, as proximate to heresy, as erroneous, as proximate to error, or savoring of heresy or error, as rash, as scandalous, as offensive to pious ears. Now the three latter notes, and to a certain extent also the fourth, "savoring of heresy or error," contain no positive and direct judgment of the Holy See concerning the falsity of the proposition itself. Directly, only the enunciation, at least public or open, of a thesis proscribed in this way is forbidden.

Therefore, in order that you may bring a certain argument from authority, it is not enough to recall that the contrary, or rather contradictory, proposition was condemned by such a Pontiff, unless it was struck at least with the stigma of error.

It indeed happens that the Holy See imprints its note upon individual propositions, which is then authentically declared to us; but it also happens that it condemns a series of propositions collectively with various notes which nevertheless do not fall upon the individual propositions.

Then, authoritatively, the individual propositions are affected at least by the smallest note; but which ones deserve a worse note private Doctors will have to teach.

Thus in moral matters, by Alexander VII, in decrees of September 24, 1665, and March 18, 1666, forty-five propositions were condemned "at least as scandalous"; by Innocent XI, in a decree of the Holy Office, March 2, 1679, sixty-five propositions were "all condemned and prohibited, as they stand, at least as scandalous and pernicious in practice"; by Alexander VIII, on August 24, 1690, two propositions, of which one is declared and condemned "as heretical," the other as "scandalous, rash, offensive to pious ears, and erroneous"; and by the same Pontiff, in a decree of the Holy Office, December 7, 1690, thirty-one propositions, some dogmatic, some moral, "as rash, scandalous, ill-sounding, injurious, proximate to heresy, savoring of heresy, erroneous, schismatic, and heretical respectively."

Yet very often appeal is made to these proscriptions as though they contained an infallible declaration of falsity.

It is also manifest that condemned propositions are wrongly alleged to demonstrate theses which are not so contradictory to them that the negation of the one is the affirmation of the other. This, however, in moral matters, is to be received with a grain of salt, since the open mind of the legislator can indicate a somewhat broader use of certain words.

Article V: Historical Notes on Moral Theology

Prooemium

Order and manner of treatment. To retrace the historical fortunes [1] both of moral science and of the sources which exhibit it is as foreign to the purpose of this book as to our ability; but we judge that to give certain historical indications will be useful to many and pleasing.

Therefore, after first considering the New Testament, we shall distinguish the Apostolic age; the age of the Fathers properly so called; the age of the Fathers less properly so called, by which at the same time transition is made to the age of the Scholastics of the Middle Ages; the age of the Scholastics after the Middle Ages; the post-scholastic age, down to St. Alphonsus; and the age after St. Alphonsus down to our own days.

Then, in a few conclusions, we shall gather, as it were, the fruits of the exposition made.

Not a few learned works contribute aids for history, for example, von Schulte, *Die Geschichte der Quellen und Literatur des canonischen Rechts*, Stuttgart, 1875; Grabmann, *Geschichte der Scholastischen Methode*, Freiburg im Breisgau, 1909-1911; Turmel, *Histoire de la theologie positive jusqu'au Concile de Trente*, Paris, 1904; Tixeront, *Histoire des dogmes dans l'antiquite chretienne*, 3 vols., Paris, 1905-1912-1919; J. de Ghellinck, S.J., *Le mouvement theologique du XIIe siecle*, Paris, 1914; Pourrat, P., *La spiritualite chretienne*, Paris, I, 1919; II, 1921.

Recently R. D. Callewaert learnedly exhibited the History of the Liturgy, *Liturgicae Institutiones*, vol. 1, c. 3, n. 53-118, Bruges, 1919.

[1] Bouquillon, *Theologia moralis fundamentalis*, in the Introduction, n. 72-140, treats at sufficient length the chiefly literary history; Koch treats the same argument in *Lehrbuch der Moraltheologie*, Introduction, § 10. Before them d'Annibale, in the Prooemium of his very well-known *Summula*, n. 3-11, treats of the vicissitudes of Moral Theology, whose formal origin he ascribes to the thirteenth century, so that only from that century does he expound its fortunes.

I. Moral Discipline in the New Testament

Already in the Gospel itself, the Lord directly proposes the moral sum, with principles concerning the charity of God and neighbor, or the greatest commandments to which all the documents of the law and the prophets can be referred [1]; and with precepts, both those which direct human actions [2], and those which regard sacrifice and the sacraments [3].

To moral doubts the Lord adapts responses, as when he declares marriage indissoluble [4].

To responses are added counsels, for example, concerning the renunciation of riches for his sake [5], and concerning almsgiving [6].

His speech becomes polemical against the scribes and Pharisees, to whom he objects that they made void the commandment of God because of their own traditions [1], and that they joined violation of the weightier commandments with scrupulosity in the smallest things [2].

Likewise he reproves a certain rigorism which did not tolerate that the disciples plucked ears of grain on the Sabbath in order to eat [3], nor grasped the saying: "I will have mercy, and not sacrifice" [4]; and which bound heavy and unbearable burdens [5].

Indeed, he already prepares the moral apology of Christians, when he wills that the justice of the disciples abound more than that of the scribes and Pharisees [6], and that it excel beyond the customs of the Gentiles by love of neighbor and merciful beneficence. The Lord pronounced a word of immense fecundity when he taught this mysterious law: "It is more blessed to give than to receive." St. Paul recalls this [8], and then, in the first century, St. Clement praises it as accepted by Christians in the First Epistle to the Corinthians: "You were all of humble mind... giving more gladly than receiving" [9].

[1] St. Matthew 22, 37-40: "Thou shalt love the Lord thy God... Thou shalt love thy neighbor... On these two commandments depend the whole law and the prophets."

[2] St. Matthew 19, 18.19: "Thou shalt not kill, thou shalt not commit adultery, thou shalt not steal," etc.

[3] St. Matthew 28, 19: "Baptizing them in the name of the Father," etc. St. Luke 22, 19.20: "And having taken bread, he gave thanks... This is my body... Do this in commemoration of me." St. John 20, 22.23: "Whose sins you shall forgive, they are forgiven them," etc.

[4] St. Matthew 19, 9. [Corrected from printed/OCR "10, 9" by context.]

[5] St. Matthew 19, 21: "If thou wilt be perfect, sell what thou hast."

[6] Luke 16, 9: "Make unto yourselves friends of the mammon of iniquity."

[1] St. Matthew 15, 6.

[2] St. Matthew 23, 24: "Blind guides, straining out a gnat, but swallowing a camel."

[3] St. Matthew 12, 8.

[4] St. Matthew 12, 7.

[5] St. Matthew 23, 4.

[6] St. Matthew 5, 20.

[7] St. Matthew 5, 47; 6, 7.

[8] Acts of the Apostles 20, 35.

[9] To the Corinthians, c. 2.

The canonical writings of the Apostles are full of moral documents, and indeed of the highest perfection, which are proposed to all the faithful. In his whole First Epistle to the Corinthians, Paul rebukes contention and vice; he teaches the faithful which states are good, which are better; he solves cases concerning things sacrificed to idols; he hands down laws concerning public worship; he instructs the faithful concerning mystical matters. Moral are his three Pastoral Epistles to Timothy and Titus, and the Epistle to Philemon. In the Epistle to the Romans, chapters 12-15 are moral; in the Second Epistle to the Corinthians, chapters 8 to 9, 15; the Epistle to the Galatians is moral from chapter 5; the Epistle to the Ephesians, from chapter 4; the Epistle to the Colossians, from chapter 3;

the First Epistle to the Thessalonians, from chapter 5; the Second, from chapter 3; the Epistle to the Hebrews, from chapter 10. Moral are the whole Catholic Epistle of St. James and each Epistle of St. Peter. The Epistles of St. John are a perpetual exhortation to charity. The Epistle of St. James is moral. The first part of the Apocalypse directs moral admonitions to various churches.

To give certain special examples: in these sacred letters principles, responses, and counsels alike recur. The excellence and primacy of charity are extolled [1]. The faithful are deterred from sins [2]. Cases are solved concerning the privilege of the faith [3], concerning things sacrificed to idols [4]; the counsel of virginity is inculcated [5], as is patience of injuries [6]. Rigorism also is rejected [7]. The apologetic exposition is prepared, while the vices of paganism are denounced [8], and the necessity of higher justice is preached [9]. Documents concerning mystical theology are already handed down [10]. Precepts concerning various states are explained [11]. The First Epistle of St. Peter contains general admonitions concerning holiness, which can be called a moral summa, just as the Catholic Epistle of St. James itself, which at the same time, not undeservedly, would be called "social" in the present meaning.

But in the first Council, which the Acts of the Apostles report to have been held at Jerusalem [12], four moral and disciplinary points are defined or decreed; and an example of authoritative solution is offered to us.

[1] 1 Corinthians, c. 13, which chapter is wholly in praise of charity; Romans 13, 9: "Love is the fullness of the law"; Galatians 5, 14: "All the law is fulfilled in one word: Thou shalt love thy neighbor as thyself."

[2] 1 Corinthians 6, 10.

[3] 1 Corinthians 7, 15.

[4] 1 Corinthians 10, 27. And cf. the various questions solved in 1 Corinthians, cc. 7-11.

[5] 1 Corinthians 7, 1-25 ff.

[6] 1 Corinthians 6, 7.

[7] 1 Corinthians 10, 28-29 and Galatians 4.

[8] Romans 1, 24-32.

[9] 1 Corinthians 5, 6-13.

[10] 1 Corinthians 12-14.

[11] 1 Timothy 3, 1-13 and cc. 5-6.

[12] Acts 15, 29.

II. The Apostolic Age

Both these things had to be accomplished in the Apostolic age: the new Christians had to be imbued with evangelical perfection, and the unity of the Catholic society founded by Christ had to be strengthened by the bond of obedience and mutual love. And this twofold solicitude is in fact demonstrated by the monuments of that age.

The Apostolic Fathers [1], St. Clement of Rome, St. Ignatius Martyr, St. Polycarp, especially commend union with superiors and charity. This is especially seen in the magnificent Epistle to the Corinthians which St. Clement wrote, having taken occasion from the sedition against the presbyters. After recalling the splendid examples of the Corinthians, which had brought so great peace and abundance of grace, he chiefly preaches humility, modesty, simplicity of soul, and concord. In the same age, the

very well-known *Didache* is ascetical in its first part, where it opposes the way of life, which is exhibited by the moral discipline of Christians, to the way of destruction; in the other part, it teaches sacramental theology, while the third part, assigned to ecclesiastical ordering, can be called canonical. The two ways also, of light and of darkness, are described in the other part of the Epistle called that of St. Barnabas. And in the second book of the *Shepherd*, Hermas seems to hand down the twelve commandments as a kind of moral summa of Christians.

[1] Concerning the Apostolic Fathers, the edition of Funk is to be commended, which Fr. Diekamp edited at Tubingen with new care; also the edition of Lightfoot: *The Apostolic Fathers*, London, 1890.

III. The Age of the Fathers Properly So Called

I. First period of the Fathers. Resting upon the revealed sources, the Holy Fathers commend the theological virtues, prayer, patience, flight from worldly delights, so that all moral discipline is supernatural. The virtues of Christians especially commend the new religion. Controversies are carried on concerning the reconciling of those who had fallen away from the faith; concerning the value of baptism ministered by heretics. And the rigor of the Montanists must be opposed.

In the second and third century there are written:

1. Apologetic works, in which it is brought out how greatly the morals of Christians excel those of pagans. Aristides does this; Athenagoras does this in the *Legation for the Christians*. The wonderful life of Christians is also described in the Epistle to Diognetus, which they ascribe to the second or third century.
2. Monographic works, such as the two epistles to virgins which are inscribed under the name of Clement of Rome; several treatises which Tertullian wrote, both as a Catholic and as a Montanist [1]; St. Cyprian, in most beautiful opuscules and ascetical little books; Origen, whose opuscule *On Prayer* is said to be an excellent work of the Alexandrian Doctor.
3. More general treatises, for example, the *Paedagogue* of Clement of Alexandria, books 2 and 3. Then also there appear the *Ecclesiastical Discipline of the Apostles* and the *Didascalia of the Twelve Apostles*, which imitate the *Didache* in moral and canonical rules.

[1] He himself calls the Lord's Prayer the *Breviary of the whole Gospel*. Koch, *Lehrbuch der Moraltheologie*, Introduction § 10, I, p. 21, note 7, observes that the first principle of a good action is placed by Tertullian in the formal fulfillment of the divine will: "For neither because it is good ought we therefore to listen, but because God commands" (*De Paenitentia*, 4).

The golden period of the Fathers. In that golden age of the Fathers, which contains the fourth century and the first part of the fifth century, the Church must be protected from the dangers of prosperity and peace. Wherefore the Fathers of that age: a) try to restrain the invasion of the morals of the Gentiles. They inveigh against usury, so that St. John Chrysostom seems somehow to have been attracted by a certain image of a better communism; b) many are occupied in describing the duties of each state; c) St. Augustine founds the City of God in the love of God, of which every virtue is a mode; d) the foundations of mystical theology are laid both by St. Macarius and by St. Augustine; e) from St. Augustine we learn the clear distinction of mortal sin from venial sin; f) in polemical controversies against the Pelagians, doctrine concerning the necessity of grace, free choice, and the conditions of merit is more accurately proposed.

The authoritative responses at that time were the responses of bishops, which were often given in Councils [2].

But in conciliar canons dogmatic definitions must be distinguished from disciplinary ones. Thus it must also be carefully weighed what the Holy Fathers said as witnesses of divine-apostolic tradition, and what they said as theologians.

Moreover, in the fifth century a very extensive collection of ecclesiastical law with moral rules is published under the name of the *Apostolic Constitutions*.

Moral matters are proposed: a) In the homilies of the Fathers: think of St. Augustine, St. John Chrysostom, the pious and affective homilies of St. Macarius of Egypt, father of mystical Theology.

b) In methodical monographs, of which St. Augustine writes many: think of his books *On Lying*, *Against Lying*, *On the Good of Marriage*, *On Holy Virginity*. St. John Chrysostom composed the classic work *On the Priesthood*; the work *On Virginity*, exhortations *To Theodore the Fallen*. On virginity we have the ascetical treatise of St. Gregory of Nyssa. Also to be remembered is St. Methodius, martyr (311), *Symposion*, or the banquet of ten maidens, in which ten virgins in order celebrate virginity and at the end sing a fervent hymn in praise of Christ the bridegroom and his bride the Church.

c) In epistles. From epistle 211 (formerly 109) and from sermons 355 and 356, *On the Morals of Clerics*, the rule of St. Augustine was taken. Many and excellent epistles of St. Jerome are had, for example, the 22nd to Eustochium, *On the Duties and Institutes of Virgins*, the 52nd to Nepotian, *On the Priestly Life*. The responses of St. Basil to the Brothers in the desert, both the fuller and the briefer, constitute his rule. He himself also already ordered the canonical discipline of penance in three canonical epistles to Amphilochius.

d) We have a manual book for the use of Christians in the work of St. Ambrose *On the Duties of Ministers*; while in the works *On the Mysteries* and *On Penance*, he treats sacramental theology. St. Augustine also left us a more general work, at once dogmatic and moral, the *Enchiridion on Faith, Hope, and Charity*.

e) The so-called *Testament of the Lord*, or the little book which in its second part orders the whole Christian life, seems to be of the same age. The *Lausiac History* of Palladius, the *Institutes of the Coenobia* and *Conferences* of Cassian, and the *Monastic History* of Theodoret teach us the ascetical norms of monks; Theodoret's fifth book exhibits summarily the Catholic doctrine of faith and morals.

[2] St. Cyprian, ep. 52, 6, recalls a little book in which solutions were preserved in writing. This seems to be the beginning of collections of canons.

III. The third period of the age of the Fathers, which in the West is concluded by St. Isidore of Seville (636), is prolonged in the East to St. John Damascene (about the middle of the eighth century).

Already after the middle of the fifth century, authors and inventors yield their place to collectors and repeaters. Both in the West and in the East, labor is expended in copying and arranging things previously said. There is zeal for preserving, not for increasing, the sacred sciences. By this zeal a more methodical exposition of matters is prepared.

The most outstanding were Boethius (524-529), whose celebrated treatise *On Consolation* contains many moral and ascetical things; Cassiodorus (570); St. Gregory of Tours (595), who in his work *On Ecclesiastical Courses* gives us a liturgical enchiridion; while St. Gregory the Great (604), in the

Commentaries on the Book of Job whose title is *Moralia*, left us an ample moral work. In the golden book of the *Pastoral Rule*, the same Pontiff left us an outstanding ascetical work. St. Caesarius of Arles (542) wrote a very ancient rule for virgins. St. Gregory also deserved very well of sacred and liturgical music; we have his complete Missal under the name of the Gregorian Sacramentary.

In the sixth century, the canonical collection of Dionysius Exiguus is to be remembered; since it was sent by Hadrian II to Charlemagne, it is thence called Hadriana. In Britain and Ireland the first penitential books appear, which exhibit the order of doing penance; in Gaul they are to be expected at the sixth century.

In the seventh century, the first books of sentences come to light; by their very name they profess to be collected sayings of others. The three books of St. Isidore of Seville propose dogmatic and moral matters to us. St. Julian of Toledo (690), in the *Prognosticon of the Future Age*, hands down counsels concerning death and burial. Then also the canonical Spanish Collection is brought into systematic order.

In the East, the very celebrated liturgical and mystical works of the pseudo-Dionysius, of the Neoplatonic school, are ascribed to the sixth century. Although these were first usurped by the Monophysites and rejected by Catholics, and are not empty of every error, nevertheless, with great applause, when in the ninth century they were rendered into Latin, they were received in the Middle Ages as true works of St. Dionysius the Areopagite and were adorned with many commentaries.

In the East also, many florilegia appear, *Eklogai*. Controversies are often carried on through opposed allegations.

Moschus composed the celebrated work concerning the virtues and miracles of ascetics under the name *Spiritual Meadow*. From St. Maximus the Confessor (662), besides most excellent chapters on charity and examinations of many doubts, we have an ascetical book by question and answer, in which a younger monk is instructed by the abbot concerning the end of man and of the world and concerning the duties of the spiritual life.

In the eighth century, St. John Damascene, who has been called the Thomas of the East, a strenuous defender of the holy images, by his greatest work, *Fount of Knowledge*, precedes the works of the Scholastics, especially that of the Master of the Sentences. He treats many dogmatic and moral matters in the work whose title is *Sacra Parallela*, so called because individual vices are compared there with individual virtues. Many things concerning the theology of the sacraments are contained in his work *On the Orthodox Faith*. Yet he himself also openly confesses that he does not speak from his own opinion, but is a collector of ancient sayings.

As to canonical collections, in the year 692, the collection made in the Trullan Council, or Quinisext Council, is like the Code of Oriental law.

The public calamities themselves already explain why this third period of the Fathers is much inferior to the preceding one.

Prooemium — IV. The Age of the Fathers Less Properly So Called

In this age, while the Fathers gradually cease to be such, the age of the Scholastics is prepared through the doctrinal exposition of masters in abbatial and episcopal schools, which are ordered

especially by the capitularies of Charlemagne.

In the eighth century, in the West, St. Bede the Venerable must be named, an assiduous copyist, with whose works, genuine or spurious, six volumes of Migne are filled. He offers aids to moral theology already in exegetical works, but especially in homilies and in the lives of certain saints.

The most ancient *Ordo Romanus* also must be cited, that is, a liturgical collection.

In the ninth century, Alcuin (804) is to be remembered; in two opuscules, *On the Virtues and Vices* and *On the Reason of the Soul*, he repeats for us many things from St. Augustine. He also explained the manner of confessing in the opuscule *On the Confession of Sins*, and wrote on Liturgy.

Rabanus Maurus (856), besides exegetical works, has liturgical and moral works: *On Not Seeing God, on Purity of Heart, and the Manner of Penance*; *On Vices and Virtues and the Satisfaction for Sins*; *On the Sacred Orders, on the Divine Sacraments and Priestly Vestments*; *On the Marriages of Blood-Relations and on the Deceptions of Magicians and False Divinations*.

Notable in ecclesiastical history are the attempts then begun to be made, and which were to be continued through this whole epoch, of reconciling with one another the sayings of the Fathers; and they attempted this the more scrupulously because not a few then thought that the Fathers had been inspired writers [1].

But the century is celebrated because of its collections. In the East, Photius, with great erudition and skill, publishes his nomocanon, in which civil laws are placed alongside canonical ones. In the West, besides several general collections composed in an imperfect systematic order, there are also special collections: penitential books. Famous also are the spurious collections: the capitularies of Benedict the Levite; the capitula of Angilramn; and especially the Pseudo-Isidorian Collection, which for a long time was held to be authentic [2].

Already above we warned that, in the ninth century, the works of the Pseudo-Dionysius were diffused in the West.

In the tenth century, to which belongs the name "the iron century," few writers, and those of slight merit, are to be alleged. The age is distinguished by the singular fortune which the dialectical art then had, so that every syllogism was held for an argument [3].

But in the eleventh century a new age already begins to dawn. They begin to write from their own judgment. Dispute arises concerning the place to be conceded to dialectic in dogmatic matters; and the use of reasoning in theology becomes greater.

The works are monographic. We shall cite St. Peter Damian (1072), who, by epistles, by sermons, and by opuscules, deserved very well concerning moral matters. He wrote *On Almsgiving*, *On Contempt of the World*, *On the Perfection of a Monk*. He most gravely reproved moral abuses in the opuscule which is called *Gomorrhianum*, while another, which is called *Gratissimum*, demonstrates the validity of an ordination made simoniacally.

Lanfranc (1089) gave us the opuscule *On Concealing Confession* and the *Decrees for the Order of St. Benedict*.

In the same century appears the *Book of Decrees* of Burchard of Worms, a celebrated canonical collection.

In the twelfth century, the principal honor is owed to the great Doctor St. Anselm (1109), although the praises of him are claimed by the dogmatic theologian and the philosopher, and he promoted moral science rather by ascetical writings.

The celebrated school of Liege offers to us for praise Alger (1132), with his treatise *On Mercy and Justice*. Hugh of St. Victor (1141) wrote a work *On the Sacraments of the Christian Faith*. Abelard comes before us, with his very well-known *Sic et Non*, or collection of opposed opinions from the sacred books and the Holy Fathers. With what intention he did this, de Ghellinck explains [1]. Abelard attributes so much to intention that he seems almost to efface the objective distinction of good and evil. He assigns far more parts to reason than St. Bernard (1151), by whom for that reason he was vigorously opposed. That holy Doctor, besides epistles and sermons, supplies us excellent moral documents in the work *On Consideration* (to Pope Eugene) and *On the Duties of Bishops*.

Toward the end of the century, Peter of Blois has many moral things in epistles, sermons, and treatises: *On Christian Friendship and the Charity of God and Neighbor*; *On the Twelve Benefits of Tribulations*; *On Sacramental Confession*; *On the Institution of a Bishop*.

The mystical-ascetical school obtains outstanding doctors: St. Bernard of Clairvaux, Hugh of St. Victor, and Richard of St. Victor (1173).

But here we must turn especially to collection. The canonical collection of St. Ivo of Chartres, which is named *Decretum*, and the *Panormia* of the same author, and the *Summa of Sentences*, which for a long time was ascribed to Hugh of St. Victor, are so excellent that Bouquillon, n. 99, did not hesitate to write that through them the edifice of moral theology had been erected which Clement of Alexandria had begun.

In the middle of this century there also appeared the most celebrated *Decretum* of Gratian, which from forensic use acquired a certain authenticity, improperly so called.

It is divided into three parts. The first treats of ecclesiastical persons and offices. It is divided into 101 Distinctions, which in turn are divided into canons. The other Part embraces 36 Causes, divided into questions. Cause 33 treats *On Penance*. The remaining causes touch upon many matters. The third Part is destined for Liturgy and is called *On Consecration*. The solicitude for reconciling authorities appears in the very title which Gratian had given to his work: *The Concord of Discordant Canons*.

In theological matters, before all others the four *Books of Sentences* (1150) of Peter Lombard come to be known. The intention of the author was, by copying many things, to give a full theological work. Throughout all the remaining Middle Ages, the work was held in the highest esteem and obtained many commentators, and those most excellent. Let it suffice to name St. Bonaventure, St. Thomas, Scotus. For several centuries it was the classic work of theology.

It embraces four books, divided into chapters without a very logical order. Afterwards it was divided into Distinctions [1]. The first book is on God and on the Most Holy Trinity; the second, on creation, on the angels, on the works of the six days, on the state of man before and after sin, on grace and on sin. The third book is on the incarnation, on the virtues, on sins, and on precepts. The fourth book treats of the sacraments and of the last things.

At the close of the twelfth century, special Summas on matrimony already exist.

[1] Cf. de Ghellinck, S.J., *Le mouvement theologique du douzieme siecle*. Cf. V, 3, p. 317 ff.

[2] Today they are sufficiently agreed that the collection was written in Gaul, in the city of Le Mans, between the years 849 and 851. The intention of "Isidore" was that of restoring ecclesiastical discipline.

[3] Cf. de Ghellinck, *Le mouvement theologique du douzieme siecle*, p. 38-40.

[1] *Le mouvement theologique du douzieme siecle*, p. 102-104 and p. 331 ff.

[1] In the Middle Ages, Distinctions signify a certain collection of chapters, or also the pauses to be made in reading according to the punctuation. de Ghellinck, cited work, *Le mouvement*, etc., p. 132.

Prooemium — V. The Age of the Scholastics of the Middle Ages

In that age, which is extended from the end of the twelfth century to the sixteenth century, a separation of theology and law was indeed made, but dogmatic theology is for the most part treated together with moral theology. The Doctors, in their youth, write commentaries on the books of the Sentences; when occasion is given, they compose quodlibetal questions; the things which they wish to examine more deeply they reserve for disputed questions. Finally they write Summas, as storehouses for the use of learners.

Sometimes they conclude the course with compendious works, such as St. Thomas's *Compendium of Theology*, in which course also they do not refuse to compose separate opuscules.

All these things are proposed in a plain and brief form, without sought-after elegance of style; altogether didactically. Documents of faith are cited very briefly; the sound philosophy of Aristotle helps them to confirm the concord of faith and reason. In this thirteenth century, Alexander of Hales (1245), O.M., was the first to use the philosophy of Aristotle in his Summa.

Before St. Thomas, Blessed Albert the Great (1280) and St. Bonaventure (1274), the Seraphic Doctor, expounded the text of the Master of the Sentences. After St. Thomas, John Duns Scotus (1308) did the same.

By unanimous consent, the prince of the Catholic school is St. Thomas, especially through his *Summa Theologica*.

He himself had previously written Commentaries on the books of the Sentences; disputed questions. He also has various quodlibetal questions, and many opuscules on special arguments: for example, on justice, on superstition, on the religious life (the controversy with William of Saint-Amour), on the Eucharist, so that we may give the subjects which more often gave origin to these treatises.

Using diverse philosophical principles, the Scotist school is opposed to the Thomistic school. Thomists trust reason more than Scotists: you would call the latter akin to Tertullian, when he attends to the will of God alone, and to Alcuin, when he ties a good moral action almost to intention alone. Thomists, on the contrary, more defend the necessity and immutability of the order of reason; they separate venial from mortal sin more objectively; they connect good habits with sanctifying grace in another way; concerning the essence of several sacraments, for example, penance, they disagree.

St. Bonaventure, with a more peaceful course, and not differing from St. Thomas in method or principles, directs as it were a third school; and at the same time he is celebrated as a doctor of mystical-ascetical theology.

Henry of Ghent (1293) also must be named; he left us quodlibetal works and a Summa.

We have a moral exposition separated from dogma in William Peraldus (before 1270), in his *Summa on Vices and Virtues*.

In the place of Decrees, Summas succeed. Celebrated is the *Summa on Matrimony* of Tancred (1210-1214), which St. Raymond received almost word for word into his own Summa. At the beginning of the thirteenth century, Robert of Flamesbury used the expository and casuistic method in his *Penitential*; likewise a moral Summa of an unknown writer preceded the very well-known *Summa on Penitential Cases*, which St. Raymond of Pennafort, O.Pr., composed. With the same author, Gregory IX, in the Constitution *Rex Pacificus*, on 5 September 1234, promulgated the books of the Decretals, five in number, whose matter is exhibited in order by this little verse: *Iudex* (Prelate), *iudicium*, *clerus*, *conubia*, *crimen*.

And at the end of the century, on 3 March 1298, Boniface VIII promulgated the Sixth Book of the Decretals, arranged in the same order.

In the fourteenth century, perhaps because of the propagation of nominalism, and certainly because of the iniquity of the times, in which the Church was struggling with the State and was suffering the Western Schism, scholastic theology lost not a little of its vigor: it becomes less ample, more subtle, more polemical [1].

Nevertheless, the celebrated Scotists O.M. Peter Aureolus (1321), the Eloquent Doctor, and Ockham (1349), author of nominalism, must be named; then, from the Friars Preachers, the Thomist Peter Paludanus (1312), and Durandus, not a Thomist, the Most Resolute Doctor.

Very well known among purely moral works is the *Summa on Cases of Conscience* of Astesanus (ca. 1317), called the Astesan; and the Summa of Bartholomew of Pisa (1338), called the Pisan.

Germany, Flanders, and Holland then brought forth mystics of great name: Tauler (1361), H. Suso (1365), Blessed Ruysbroeck (the Admirable Doctor), Gerard of Zutphen (1398).

The *Corpus Iuris Canonici* was completed in the same century by the Clementines, which, arranged in the same order as the Decretals, were promulgated on 25 October 1317; and by the Constitutions which are called *Extravagantes*, because they were outside the authentic collections: 20 of John XXII and 70 common Extravagantes.

In the fifteenth century, John Capreolus, O.Pr. (1441), wrote highly esteemed commentaries on the Master of the Sentences, to which were added controversies between St. Thomas and the other theologians and philosophers.

In mystical theology Thomas a Kempis (1471) is to be praised.

Angelus de Clavasio (1495), whose Summa was called the *Angelica*, and Silvester Prierias (1523), who wrote the *Summa Silvestrina*, honored casuistic moral theology.

[1] Cf. Bouquillon, n. 104.

Prooemium — VI. The Age of the Scholastics after the Middle Ages

Moral theology knew a golden age from the Pseudo-Reformation down to Jansenism, with Doctors who began in the schools, in place of the Books of Sentences, to expound and illustrate the Summa of

St. Thomas. "Then monuments of science are erected, incomparable in solidity, amplitude, and beauty" [1].

Some Doctors elucidate more strictly the text of St. Thomas; Cajetan (1534) did this in his very well-known commentary, and Francis Toletus (1596), S.J. Others, after giving a brief explanation of St. Thomas, append ample disputations to the individual articles of St. Thomas; this is the method of Suarez (1617) and Vasquez (1604). In these works dogmatic matters are proposed and discussed together with moral matters. Suarez uses the scholastic method more strictly in his renowned disputations, since, before his own solution, he accurately proposes and weighs the contrary reasons. Besides those supreme men, Louis Molina, S.J. (1600), Gregory of Valencia, S.J. (1603), Bannez, O.Pr. (1604), and Lezana, O.Carm. (1659), must also be cited.

To the works which strictly or broadly expound a part of St. Thomas's Summa there are also added outstanding treatises independent of the praised Summa, and this in a twofold way. Some, being destined for special parts of moral theology, more easily preserve the scholastic method. Thus L. Molina, *On Justice and Law*; Lessius, S.J. (1623), *On the Four Cardinal Virtues*; D. Soto, O.Pr. (1560), *On Justice and Law*; Suarez, S.J., *On Laws* (a classic work), *On the Threefold Theological Virtue, On the Virtue of Religion, Five Treatises on the Prima Secundae*; Thomas Sanchez, S.J. (1610), *On the Sacrament of Matrimony, On the Precepts of the Decalogue* (which work remained incomplete); Bonacina (bishop, 1631), *On Laws*; Coninck, S.J. (1633), *On the Sacraments and Censures, On the Virtues*; and John de Lugo, S.J. (1660), *On Divine Faith, On Justice and Law, On the Sacraments*. He, by Cardinal d'Annibale, confirming a similar judgment of St. Alphonsus (*Theol. mor.* III, 552), although sometimes more subtle, is presented as "the greatest of all Moralists before, excepting the one Angelic Doctor, and after." Others treat the whole of moral theology solidly indeed, but less scholastically: Azor, S.J. (1603); Castropalao, S.J. (1633); P. Laymann, S.J. (1635); Candidus, O.Pr. (1654); Sayrus, O.S.B. (1602); Bonacina, who wrote a most complete treatise on censures.

Works of smaller bulk are also composed, whose writers, being more intent on immediately practical utility, are called casuists. Among them stand out Martin Azpilcueta (the Navarrese Doctor, 1586), who wrote the *Manual for Confessors*; add Cajetan, O.Pr. (1534), whose work is the *Summula of Cases*; E. Sa, S.J. (1596), whose work is the *Aphorisms of Confessors*; Toletus, S.J. (1596), whose work is the *Summa of Cases of Conscience*. Especially the *Medulla of Moral Theology* of Father Busembaum, S.J. (1668), must be alleged; it had innumerable editions, and to it St. Alphonsus himself joined his Moral Theology, almost as the Scholastics joined their works to the Master of the Sentences or to St. Thomas.

At the same time Lychetus (1520), from the school of Scotus, illustrated that Doctor with learned notes.

The golden age did not lack mystical or ascetical writers. We shall cite Louis of Blois (1556); Louis of Granada (1588); St. Teresa (1589); St. John of the Cross (1591); L. Scupoli, O.Theat. (1610); Alphonsus Rodriguez, S.J. (1616); Bellarmine (1621); St. Francis de Sales (1622).

The same Bellarmine becomes in that age the prince of polemical theology by his classic work of the *Controversies*.

The division which previously, in the question of the helps of grace, separated the Society of Jesus from the illustrious Order of St. Dominic, passed into the practical order in the question of

probabilism, after most of the Friars Preachers, with Billuart, adhered to the doctrines of probabiliorism. And thus there exists a school which uses stricter principles, opposed to another more benign school. On the stricter side stand, together with the Friars Preachers, the Carmelites; while the Order of St. Francis, with the Society of Jesus, defends the more benign views.

But certain abuses, by which the genuine doctrine of probabilism was adulterated, together with the Jansenist heresy and Thomistic philosophy abandoned for Cartesian philosophy, paved the way to the morbid age, or the age of languor.

[1] Bouquillon, *Theol. fundament.*, n. 117.

Prooemium — VII. The Post-Scholastic Age up to St. Alphonsus

Nor through that age, which we have called morbid, were distinguished theologians lacking. Tamburini, S.J. (1675), can be cited, both in his more extended work and in his practice of ready confession and communion; Gobat, S.J. (1679); Viva, S.J. (1726); Voit, S.J. (1780); Lacroix, S.J. (1714); Reuter, S.J. (1762); the Carmelite Salmanticenses, whose course, consisting of six volumes, begun in the year 1665, was not completed until about the year 1725; Bordonius, Tert. O.S.Fr. (1671); Sporer, O.M. (1683); Elbel, O.M. (1756); Struggl, O.Serv. B.M.V. (1760); Caramuel, O.Cist. (1682); Roncaglia, O.M.Dei (1737); Amort (1775); D. Concina, O.Pr. (1756); Passerinus, O.Pr. (1677); Collet (1770).

On pastoral theology many works were written, for example, by M. Wigandt, O.B. (1708), and J. Reuter, S.J. (1769).

Liturgy had excellent expositors, such as Merati, O.Theat. (1744), and Cavalieri, O.S.Aug. (1757); or editors of texts, such as Mabillon, O.S.B. (1707), Martene, O.S.B. (1739) [1], and both brothers Assemani (1768 and 1780), of whom the younger edited the liturgical Code of the universal Church.

Nevertheless, the scholastic method having been abandoned for Cartesian reasoning, and the Jansenist plague raging, great confusion was brought into the theological disciplines. The sufficiency of attrition in the sacrament of penance was disputed, whether absolution was to be given or deferred; but especially the epoch is full of disputations on probabilism: which cause, well defended by not a few, knew friends who by their laxism harmed it. Not a few laxer or "ill-sounding" propositions were reproved. Thence those who followed the stricter side gained strength, although these also were more than once condemned by the Holy See [1], when divine Providence provided for the Church the great moral Doctor, St. Alphonsus de Liguori (1696-1787), who, not without the opposition and envy of many, vindicated its rights and place for the solidly probable opinion. Koch also observes [2] that, after the middle of the eighteenth century, in Germany and elsewhere, moral theology was almost confused with natural ethics, so that it had nearly lost the supernatural regard.

Moral theology was contained especially in courses and compendia. Gradually St. Alphonsus obtained the principal place in Catholic schools.

[1] He also excellently explains Liturgy in the work *On the Ancient Rites of the Church*.

[1] d'Annibale, *Summula*, I, 11, writes: "It was all over for probabilism... had not St. Alphonsus happened..." Yet this seems excessive.

[2] *Lehrbuch*, etc.

Prooemium — VIII. From St. Alphonsus to Our Days

Therefore, by the authority of St. Alphonsus it was brought about that excessive severity and excessive benignity were excluded from Catholic schools.

At the same time also the political regime was changed almost everywhere from the foundations.

For then, prepared through the heresies of the sixteenth century, the public apostasy of Christian nations was formally consummated, so that civil society began to rest on another foundation, and that a human one rather than an evangelical one.

This condition of affairs is deplored by some as the beginning of an ever-increasing disturbance, while for others "a great order of the ages is born anew." That is, just as, through various stages, the first of which was marked by the bloody sufferings of the martyrs, the religion of Christ raised human society from paganism to Christianity, so now divine Providence, in no way unmindful of the promises made to Christ, reserves, through a new series of ages, another and more glorious triumph for the Catholic Church, which it will win over apostasy itself, and by which it will lead society back from neo-paganism, worse than the former paganism was, to a Christianity or Catholicism more perfect than the former one was.

However these things will turn out - for who knows the counsels of God - the ways to a new prosperity of moral science seem to lie open. Jansenism and Gallicanism have been overthrown; Josephinism, with the very princes who used to call ecclesiastical matters back to themselves, has vanished. Catholic theologians, by the diligent prudence of the Holy See procuring this, have gratefully recovered the Angelic Doctor, and have received St. Alphonsus as a safe guide, especially in circumspectly defining practical matters. More accurate editions of the Holy Fathers and ecclesiastical writers, and the advances of a more refined cultivation of history, bring no slight aids to theologians. And in not a few questions themselves which today must be weighed, an opportunity is offered to minds for exercising their keenness. Therefore nothing seems to be lacking which is necessary or useful for the new vigor of moral theology.

Yet it must be confessed that, in the nineteenth century, after some breath had been taken from political disturbances, almost nothing was published except Manuals and Compendia; among these, to speak only of the dead, Gury-Ballerini, S.J., Bishop Simar, Cardinal d'Annibale, Aertnys, C.SS.R., Cl. Marc, C.SS.R., Lehmkuhl, S.J., and Genicot, S.J., rightly excel. Indeed certain works, for example the very celebrated compendium of Gury, by the very catechetical form of questions and answers seemed to profess a less adult age of science. For we prefer to ascribe the smallness of most works to a new beginning of life rather than, as d'Annibale thinks [1], to powers failing from old age. Moreover, more notable special treatises appeared, such as those on the cardinal virtues written by the illustrious Bishop of Bruges, Waffelaert, and those on justice and contracts by Carriere in France and by Crolly in Ireland. Indeed, both by abundance of matters and by force of speaking and arguing, the *Moral Theological Work* of Ballerini approached the classic works of the golden age; after the death of the illustrious professor, the very learned Palmieri, S.J., edited and completed it.

And as signs of new vigor we joyfully regard as auspicious the lesser esteem in which merely casuistic treatises are now held, especially those which consist almost solely in the negative parts of moral theology, or in weighing sins and vices; and the fervor with which ascetical studies have begun to be cultivated.

Besides, by the Constitution *Providentissima Mater*, on 27 May 1917, the Code of Canon Law was promulgated. It not only embraces the disciplinary laws of the Church with wonderful brevity and arrangement, but also supplies to moral theology, concerning justice, the sacraments, and censures, many certain and entirely secure rules, since they emanate from the supreme legislative power of the Church, which in ordering matters of faith and morals is infallible.

[1] *Summula*, I, 7.

Present-Day Requirements. Moreover, it seems necessary that present-day writers of moral theology satisfy these desires: 1) that they strive to perfect the rational investigation of questions which do not surpass the powers of reason, so that the intrinsic reason of conclusions may become more manifest; 2) that the positive part of Christian justice, which consists in pursuing honorable and better parts, may obtain greater honor in moral treatises, and that the sublime perfection of the Gospel may be preached more openly and boldly; 3) that present-day difficulties and obscurities of cases, psychological, political, and social, which arise daily, may be examined with a more confident mind and more generous labor by men to whom present-day facts and juridical regimes are not unknown, and may be dispelled as far as possible. Thus it will happen that practical norms are truly brought down to the use of our contemporaries, and assertions are not now merely repeated from the most illustrious Doctors, which they, for their own age, discovered and proposed with admirable genius and erudition. Thus present-day moralists will be able to be called imitators rather than copyists of their illustrious predecessors; thus also by their own lucubrations they will confirm the hope of a new golden age.

Prooemium — IX. Various Observations on These Indications

I. On moral controversies. To know the controversies themselves is of no little profit to him who wishes to penetrate doctrinal history more deeply. For although their occasion not rarely is error in faith or morals, so that they end in apostasies or in the cutting off of rotten members, and although their excessive fervor is wont to injure charity, nevertheless at the same time they prepare more accurate concepts and a more conscious possession of truth. Thus, in our matter, how much the controversies concerning the Most Holy Eucharist and concerning the cult of the Sacred Heart have profited devotion itself. In the eleventh and twelfth centuries, in which there was so great a struggle against the usurpations of laymen in the conferral of benefices, those usurpations spread simony; thence the question was moved concerning the value of ordinations obtained simoniacally; thence the theology of the sacraments was perfected.

To indicate certain principal controversies: in the first age, the value of baptism conferred by heretics, the reconciliation of those who had fallen away from the faith, martyrdom voluntarily undertaken, virginity, and second marriages were controverted; and the rigor of the Montanists had to be opposed.

In the second age of the Fathers, Manichaeism had to be overthrown; and in the Middle Ages itself the sects of the Manichaeans infested Europe and induced the more severe discipline of the Inquisition.

In the ninth century, in the East, there was a struggle concerning the cult of the holy images.

In the eleventh and twelfth centuries simony had to be extirpated.

Through the Middle Ages, the ascetical question, already prepared by St. Augustine, and which returned in the mystical controversies of the eighteenth century, was moved, concerning the reconciliation of our love and the love of God [1].

Already in the thirteenth century and then in the fourteenth, several ascetical questions concerning the religious life and poverty were sharply moved, even among religious.

In the eighteenth century mystical controversies troubled the Church after Molinos (1690). But the question concerning usury, already arisen in the fourth century, has not even today wholly ceased. From the sixteenth century the controversy became frequent both between Catholics and heretics (in which matter Jansenist rigorism rather adhered to non-Catholics), and among Catholics themselves. Benedict XIV, having convoked an assembly of theologians, wished to settle the matter by the Encyclical Letter *Vix Pervenit*, concerning whose value there was afterwards dispute, until in our days milder responses practically prevailed [1].

From the seventeenth century there arose the great conflict concerning Probabilism, which some, a few years having elapsed, tried with little appropriateness to renew in Holland and Switzerland.

Besides that question, the so-called Americanism, about which Leo XIII wrote letters to Cardinal Gibbons; the spiritual method; the liturgical informing of piety; and the renewal of a certain suspect mysticism occupy minds not a little.

At the same time, sexual and conjugal questions demand most diligent studies from moral theologians. Add doubts concerning cooperation with "modern" liberties.

[1] On this matter it is useful to read Rousselot, S.J., *Le probleme de l'amour au moyen-age*, in *Beitrage zur Geschichte der Philosophie des Mittelalters*, t. VI (Baumker and von Hertling).

[1] Cf. our *Questions on Justice*, n. 358-362.

Prooemium — IX. Various Observations on These Indications

II. Various conclusions or corollaries.

1. Shall we say that in the history of moral theology there have been various successions of ages which are distinguished in the life of a human person, so that childhood was followed by adolescence; to this succeeded the age of maturity or manhood, which would end in cold old age? Rather, in the individual epochs of the Fathers and of the Scholastics, there was a beginning, a noonday splendor, and then an evening twilight. But through the night itself a new day was being prepared, so that rather, after its beginnings, the age of moral theology - why should we not say the same of every science? - was one of perpetual and progressing adolescence, though not by a continuous motion. Not without merit did St. Paul join the perfect man with the age of the fullness of Christ (cf. Eph. 4, 13).
2. The completed science of moral theology requires the use of the sources of revelation; the aid of the principles of philosophy; the concrete examination of causes to which the principles must be applied. The age of the Fathers taught the use of revelation: it built a supernatural moral science; the age of the Scholastics of the Middle Ages contributed the aid of philosophy; the age of the Scholastics after the Middle Ages added a better examination of facts. Psychological investigation will be the work of the present age.

Moral theology needs both matters and an ordered disposition of matters. Prosperous periods contributed the matters; through more cloudy times the systematic disposition was prepared.

Therefore, if we wish to define by some principal quality the individual ages which we have distinguished, they seem able to be exhibited in order thus: the Apostolic age was paraenetic or hortatory; the following age of two centuries, both hortatory and apologetic; the golden age of the Fathers, theologically (with attention to the sources) doctrinal and censorial; the age of the Fathers less properly so called, collecting and ordering; the age of the Scholastics of the Middle Ages, philosophical or ratiocinative; the age of the Scholastics after the Middle Ages, because of the fullness of exposition, can be called moral by antonomasia; to this succeeded the contentious age; while the age after St. Alphonsus is more conciliatory and practical. With the accession now of psychological analysis, moral theology will receive a new complement.

3. In moral theology arguments from authority must be joined with arguments from reason. If you rely on authority alone, the force of authority is easily extended beyond what is right, and progress is impeded. Thus, in an age when men thought only of preserving doctrine, the Fathers were considered inspired, whence violent interpretations came about. If you neglect the revealed sources, either dialectical subtleties enervate the rules, or there is now proposed only a human and natural honesty, in place of the evangelical sublimity which was before the eyes of the first Christians.

False philosophy harms science more than the necessity of attacking heresies. This latter sharpens minds and polishes norms; the former destroys science while by error it perverts even the minds of good men.

4. In every age a certain rigorism had to be overthrown, which by its very severity turns men away from religion.

Article VI: Order of Treatment

Prooemium

All moral theology admits this first division, by which the more general, or fundamental, part is distinguished from the special part.

What general theology of morals contains is easily gathered from the very definition of moral theology. For fundamental theology can be called a certain explanation of that definition.

For we shall have to treat in as many treatises:

1. On man elevated and repaired, or on the subject for whom moral theology is written;
2. On his human acts, which we have said are the remote object of moral theology;
3. and 4. On the rules by which those acts are to be ordered. For a regulative science ought to know and apply those rules. And from the articles of faith themselves we are taught that human acts are to be ordered according to a twofold rule: the remote rule, such as law is, and the proximate rule, such as conscience is;

5. Our deficient liberty has evil acts, which demand a treatise on sins;
6. For doing good acts we are helped by various actual and habitual aids, concerning which there will be the sixth treatise.

Special theology embraces two great parts. One is on the exercise of virtues and the connected duties; the other on the right use of the sacraments. For it pleased the divine munificence to open to us, from the merits of Christ, fountains of graces in the sacraments, and by sacramental actions to help, confirm, and perfect our human actions.

To these parts there is usually added, by way of a kind of appendix, a treatise on the canonical matter of ecclesiastical penalties, since those penalties are to be avoided by our human action, and they affect not a little the right use of the sacraments.

But the treatise on laws, on the sacraments, and on penalties claims for itself a place not secondary in canon law, although the respect is different. Wherefore we have prepared a separate canonical-moral volume on the positive obligations of Christians, on the sacraments, and on penalties, so that it can be useful to each school.

Indeed, the same plan could have been taken concerning Laws in general, concerning which the same reason held. Nevertheless, notions concerning laws are so necessary before the most weighty treatise on justice, and in the whole of moral theology they find such frequent applications - since everywhere natural law is mixed with positive law, whether divine or human - that we have not dared to separate that treatise from moral theology.

Besides, there could be uncertainty concerning the place in which the treatise on Chastity and the opposed vices might more suitably be proposed. Since the right use of the generative faculty is reserved to the conjugal state, its norms are not well grasped before sufficient knowledge of the matrimonial state has been acquired. Wherefore several approach that delicate argument twice: in the treatise on virtues they treat only of carnal vice; what use of the faculty is honorable and praiseworthy they explain in the treatise on matrimony. This division of one argument, this interposition of vice among the virtues, are strange and not without inconveniences. Yet again, a treatise which is wholly moral is not well placed among parts that are rather canonical. Therefore, all things having been weighed, we have preferred to devote a separate little book to that treatment.

Prooemium — Summary

The part of theological science which is called moral seeks and proposes practical dictates by which, in the present order of elevated and repaired nature, according to faith and reason, human acts are to be regulated.

II. It differs from dogmatic theology by its material object, that is, human acts, and those to be regulated, while dogmatic theology is occupied with the truths themselves of faith, as such, to be proposed systematically to the intellect; from canon law, by the justice which it pursues, which is justice in the internal forum or before God, while canon law makes a citizen just in the external forum of the Church; from ascetical, mystical, and pastoral science, by the greater extension of the object, which is every honorable thing and not only the better good, and by a more speculative proposition, while ascetical and mystical science, concerned with perfection, and pastoral theology, at

the same time inquire into the ways of attaining their objects. It transcends all human sciences, even Ethics itself, by its formal object, which it finds in the articles of faith.

Although the science of law and the science of morals must be distinguished, nevertheless they must not be so separated that the expert in law can abstract from moral truth. Those who preach such a separation spread an anti-natural error harmful to society.

Below dogmatic theology, moral theology subordinates to itself ascetical science, to which it ministers fundamental principles, although by its end ascetical science is superior to it in degree.

III. The sources of moral theology are the sources common to all theology: the Word of God, the Magisterium of the Church, human authorities, and reason. Although, because of its material object, moral theology ought more often than dogmatic theology to appeal to reason.

Among authorities St. Thomas and St. Alphonsus stand out; nevertheless their individual opinions are by no means imposed as to be followed; their commendation dispenses theologians from no personal investigation.

Authorities, moreover, at the same time attest the accepted doctrine of the Church and by their own labor enrich the science.

IV. The method, which can be scholastic or casuistic, will rather be scholastic, insofar as we shall devote labor to seeking the intrinsic reasons of conclusions. Nevertheless our treatment will be brief, because we shall send a fuller exposition and polemical disputations to the special treatises joined with this work of ours.

V. Historical notes. Already in the sacred letters themselves of the New Testament there are many moral parts in which we read principles, precepts, counsels, reproofs, and definitions of authority. The Fathers of the Apostolic age are exhorters; in the second and third century they are exhorters and apologists; then, in the golden period which runs from the fourth century to the middle of the fifth century, they hand down to us the doctrine of morals drawn from the revealed sources, and at the same time they struggle against invading pagan morals. In the subsequent period, the Fathers rather preserve and collect things said before, which then the Fathers less properly so called (from the middle of the seventh century in the West, the eighth in the East) order more methodically, while in abbatial and episcopal schools the age of the Scholastics of the Middle Ages is prepared (from the thirteenth century to the sixteenth). Then, by the cultivation of dialectic (even excessive) and the philosophy of Aristotle, minds perfected moral doctrine by the aids of human reason. The Scholastics of the modern age, who flourished in the sixteenth and seventeenth century, adorned this doctrine, already thus expounded, with a fuller exposition and a more careful application to facts, so that that age can be called the golden age of moral theology. Then, already from the middle of the seventeenth century, because of excessively subtle lucubrations and the Jansenist plague, there succeeded an age which we can name from civil wars, when Catholic writers themselves contended so sharply among themselves concerning probabilism and the administration of the sacrament of penance. The prudent science and labor of St. Alphonsus recalled minds to concord, while at the same time inaugurating an age more practical than doctrinal. It is now permitted to hope for a new golden age, in which, with St. Thomas and St. Alphonsus as leaders, modern erudition may be joined with a greater penetration of principles, souls may be more confidently stirred up to pursuing the positive parts of Christian justice, and the very examination of applications may be completed by psychological observation.

Nevertheless controversies have never been lacking: there has been dispute concerning the value of the baptism of heretics, concerning penance, concerning virginity and widowhood, concerning simoniacal ordination, concerning voluntary poverty, concerning mysticism, concerning usury, concerning probabilism. Present-day questions are concerning "active" virtues with Americanism, concerning the ascetical method, concerning the liturgical informing of piety, concerning matrimony and the duties of spouses, concerning cooperation with modern liberties.

After, in the twelfth century, canon law was separated from moral discipline, nevertheless each science evolved in a sufficiently parallel manner: not rarely the same men were moralists who were outstanding canonists. The Decretum of Gratian came to light with the books of the Sentences; the Decretals of Gregory IX with the Summa of St. Thomas; and now the recently promulgated Code of Canon Law increases the hope conceived concerning moral theology.

Historical facts also demonstrate this: dissensions of Catholics harm solid moral science less than heresies to be attacked; the forgetting of sound philosophy harms it more than exterior calamities.

Moral theology needs both the documents of faith and the labor of reason; applications to concrete cases must be connected with principles.

Today it is necessary with great care to demonstrate Catholic conclusions; to join solicitude concerning perfection with responses concerning things strictly necessary; and not to consider only individual persons, but to attend more to social respects.

VI. This will be the natural order of general theology: that successively we treat of the subject for whom moral theology exists, or of man elevated and repaired; of his human acts; of the remote and proximate rule of those acts, or of laws and conscience; finally, of sins, and of the aids for the right use of our free will.

To forestall fallacies and errors, we have warned beforehand that prudent use must be made of rules of law, lest they be appealed to beyond what the reason on which they rest permits, or where there is no place for them. We demonstrated this concerning these three sayings: In doubt one must stand for the validity of the act; Charity does not oblige with excessive inconvenience, or with grave and proportionate inconvenience; In an equal cause, the condition of the possessor is better.

We also spoke of the right use of the very celebrated distinction between *per se* and *per accidens*, which can be referred either to the plurality of cases or to causality itself, observing that no excuse arises if a condition of honesty has accidentally been lacking, but indeed there is an excuse if the consequent effect has accidentally been impeded; and that an evil effect which must be attributed to a concurrent cause is not imputed to him who avoided that evil effect as much as he was bound by a positive duty to take care of it.

Finally, lest we be deceived in alleging condemned propositions, we said that the various notes by which propositions are branded must be observed, and the strict meaning itself of the thesis which is disapproved.

Thus we have prepared the approach to the more general or fundamental theology itself.

Treatise I: On the Subject for Whom Moral Theology Is Written

Usefulness of the treatise. It is helpful first of all to know to whom moral rules are to be proposed and accommodated.

The subject of moral theology is man, in his present condition as a wayfarer.

"Man," I say, that is, a rational creature, a person, and a part of the human race divided into perfect societies.

"Creature": therefore fully constituted under God, from whom he received being, with the absolute obligation of preserving the order promulgated by God, whether in human nature itself, or by superadded positive will.

"Rational": therefore a formal praiser of God, who ought to refer both himself and the world to God.

"Person," that is, existing for himself, or made for a personal end or beatitude, and, by an intimate appetite which shows itself in every pursuit by which he seeks the true, the good, and the beautiful, tending toward God.

"Part of the human race divided into perfect societies": therefore, with his personal dignity preserved, subordinated to the society of which he is a member.

"In his present condition," of man elevated and redeemed by Christ. As elevated, man is called to the immediate possession of God, which is now begun through sanctifying grace, but will be fully perfected in heaven through glory. As redeemed by Christ, he is his adoptive brother, called to assimilation to the Son of God, with whom, as with the head, he becomes one body as a member.

"As a wayfarer," that is, moving himself toward the terminus, or a being not yet perfect, who ought to perfect or complete himself.

Yet do not think that these various aspects and connected functions are opposed or disparate. On the contrary, they conspire into a wonderful unity. To whichever one he fittingly tends, man fulfills all the others. Thus, he who obeys God praises God, becomes blessed, tends toward God, serves society, imitates Christ, and perfects himself. Nor can anyone render himself useful to society in the due manner without at the same time perfecting himself and performing or obtaining all the other things. You may say the same of him who truly pursues his own perfection.

Man perfect in the terminus is man deified by the beatific vision. Man perfect on the way is man who is wholly disposed toward that deification, turned toward it with full will. For the perfection of the imperfect is disposition toward perfection. But man is disposed toward deification insofar as he renders himself conformable to God in that part which it is in his power to join to God or to separate from God, that is, in the will. This now, as we shall see later, is done through charity.

This same thing is shown in another and perhaps better way. In the present condition of our elevation, our perfection is less our own work than a divine benefit to be accepted by us. Wherefore, the disposition toward deification stands in our adaptation to the will of God, which, just as it alone gave the vocation, alone can complete the same by the beatific possession of God. And this perfection is also an imitation of Christ, who taught us to pray: "Thy will be done"; and from the beginning of his mortal life was the most perfect follower of the divine will, according to that saying: "In the head of the book it is written of me, that I should do thy will, O God" (Heb. 10, 7).

Corollary. If things stand thus, moral theology is at the same time the science of rectitude, of perfection, and of beatitude.

Summary

Man, a rational creature, a person, and at the same time part of a perfect society, in his present condition as a wayfarer, ought both to serve God and society, and to consult for himself and imitate Christ. Yet these functions are so closely joined with one another that, by the formal execution of one, the others at the same time are materially fulfilled. But the perfection of the wayfarer is that he dispose himself to deification through conformity with the divine will. Insofar as it teaches these things, moral theology is at the same time the science of rectitude, perfection, and happiness.

Treatise II: On Human Acts

Title I: Notions and Divisions

Usefulness. By accurate notions the distinct knowledge of things is prepared for the intellect. Especially to be attended to are the notions of the commanded act and the elicited act, and of moral liberty.

The notion of a human act. An act is called human insofar as it is voluntary, that is, insofar as it proceeds from the will, with advertence of reason, toward human finality.

For it belongs to the specific dignity of the rational animal that he act by conscious reason and will. The acts by which we seem to operate in a way similar to the other living beings have customarily been called acts of man. Cf. St. Thomas, 1, 2, q. 1, art. 1.

Therefore a fully human act is a fully voluntary act.

In our present life, an act is at the same time human and free. For in heaven the most fully voluntary act of adhering to God, our beatific end, cannot be psychologically free.

For we know from philosophy that a psychologically free agent is one who, all things required for acting being posited, can do or omit the action (liberty of contradiction), and can choose this action or a different one (liberty of specification).

Whether an act can be free without some attention to finality, or to the order of reason; or whether, when only temporal utilities are adverted to, then we necessarily embrace the greater utility: this is disputed. Those who think that this attention is not required admit human acts which are not moral. We, as is evident from our very definition of a human act, rather hold the contrary side with St. Thomas, l.c.; cf. Suarez, *De bonitate et malitia humanorum actuum*, d. 1, s. 1, n. 9, 10.

[1] Recently Victor Frins, S.J., treats the matter fully and learnedly in *De actibus humanis*, 3 vols., Freiburg im Breisgau, 1897-1904.

The notion of a moral act. An act is called moral insofar as it pertains to morals, or to the manner and custom of human life. Therefore acts are formally moral insofar as they give quality and value to life in rational estimation [1].

According to St. Thomas, the genus of morals begins where dominion of the will is first found. Wherefore all human acts are at the same time moral. Cf. 1, 2, q. 18, art. 5, 9; and q. 19, art. 1, ad 3.

Therefore there will also be a twofold division of human acts: one psychological, by which they are considered in their physical constitution, or as acts; the other moral, by which they are considered in their rational estimation, or as human. A third division, from efficacy, is not common to all acts.

[1] In explaining the notion of morality, theologians labor rather considerably. Cf. Lehmkuhl, I, 93.

I. Psychological division of human acts. 1. Human acts are internal or external. The former are completed by internal powers, and do not appear outwardly in any way: to think, to imagine. The latter either are manifested by some sensible sign, or proceed to external powers: words by which interior affections are expressed; genuflection for adoring.

Strictly speaking, the act which is called external ought to be called mixed: for unless the will had a part in it, it would not be human.

2. Acts are natural or supernatural. The former are done by the natural powers alone, with the ordinary concurrence of the First Cause; supernatural acts are done with the aid of grace transferring the act to the supernatural order.

Moreover, graces are granted which are called medicinal, insofar as they confer strength for avoiding sins. Yet are they purely medicinal, so that, when they are given to unbelievers, acts consonant with these graces do not transcend the natural order? Many, perhaps most, admit such graces as purely medicinal; we rather incline to the negative side.

3. Human acts are elicited or commanded.

To command is to move someone toward doing something, by intimating or announcing (proposing) to him the thing to be done, as if you were to say: Do this. We can command ourselves and others. Yet others only if they are inferior to us; and then the external manifestation of our will is necessary.

Now acts are elicited or commanded in a twofold way.

a) With attention to their efficient causality, elicited acts are acts which, commanded by no other act, are consummated in the will itself which determined itself to acting: such can be an act of love of God. Commanded acts, on the contrary, are those which, from the command of the will, are effected by other powers, whether internal or external, indeed even by the will itself. Think of the various acts of divine worship which the will exercises through mind and body: prayer, psalmody, inclinations of the head.

b) With attention to final causality, or motive, acts are called elicited with respect to the proximate motive; commanded, with respect to another motive by which the agent is moved to perform the act under its proximate motive: as if from fear you were to make an act of charity.

Since the question concerns final causality, not efficient causality, a nobler action can be commanded by an inferior one. But it is clear that, for the command to be efficacious, the powers for making the nobler act must be at hand, or, in the example alleged, grace for making an act of charity.

An act can be done under its own proper motive, and also simply under a nobler motive. Thus, a poor man asks alms of me. I can bestow alms upon him from mere charitable benevolence; and the same charity can command in me an affection of mercy or compassion, under which, with charity commanding, I bestow the alms. In the latter case the act is strictly commanded; in the former, only broadly, because not mercy itself, but charity alone, is exercised in it.

Moral division. As moral, human acts can be right or depraved, according as they are done according to the order of reason, or apart from or against that order.

They are licit or illicit, according as they are consonant with a law that commands or even counsels, or are repugnant to a law that commands.

They are good or evil, with attention to the proportion which they have to the agent, to whom they can be fitting or unfitting.

We do not add indifferent acts, because, as they are received in the subject, they cannot affect him except well or badly. Yet those acts are called indifferent which, with attention to their object or genus, cannot yet be denominated good or evil.

Insofar as they are referred to another, the same acts are imputable unto praise or blame, unto reward or punishment, and consequently meritorious or demeritorious.

Moral liberty. Just as psychological liberty coheres with the psychological account of a human act, so moral liberty is connected with the moral account of the same act.

This, however, is understood in two ways.

1. In the more frequent use, moral liberty denies an obligation of the will: I have moral liberty of praying, studying, walking.
2. In the less frequent use, it denies an impediment of the will, when, as much as the will itself wishes, so much can it unfold itself. Therefore it denies those several servitudes, more or less full, of concupiscences or of bodily weight, which we have to undergo with groaning, as when we complain that the mind was lacking to us for rising at the appointed hour.

This moral liberty has been wounded by original sin, yet not destroyed. Therefore the proposition was condemned that, in the present state, man, left to himself, would have power only for sinning. Cf. propositions 25, 27 and 65 of Baius, among the propositions condemned by St. Pius V, respectively as "heretical, erroneous, suspect, rash, scandalous, and offensive to pious ears." 1 Oct. 1567. Prop. 25: "All the works of unbelievers are sins, and the virtues of philosophers are vices." Prop. 65: "Only by Pelagian error can some use of free will be admitted as good or not evil; and he who so thinks and teaches does injury to the grace of Christ." Prop. 27: "Free will, without the aid of the grace of God, has power only for sinning." (*Denz.*, n. 1025, 1917, and 1065.)

Wherefore the love of charity, in heaven, will be at the same time psychologically necessary and morally supremely free: by loving God there, the will perfectly effects what it wills to effect.

Division of certain acts from efficacy. Not all acts, but not a few, are done less for their own sake than for a further efficacy: thus the buyer and the seller make a contract of sale in order to have the thing or the money. These acts are distinguished as valid or invalid. The former have what is essentially required for that efficacy; the latter lack an essential element. Valid acts themselves are, some, rescindable by human authority: for example, several contracts, on account of injury to the other party; others cannot be rescinded; and this either absolutely, as a consummated marriage, or less absolutely, as a ratified marriage, which, by power divinely conferred, can be destroyed by the Supreme Pontiff for a just cause.

Concerning not a few acts, questions of no small importance arise in law and in moral theology: whether they are invalid ipso facto and from the beginning, and by what law, divine or human; or whether they can be weakened only by the sentence of a judge or by the authority of a legitimate superior.

Not every valid act is licit: for instance, a marriage made against a legitimate prohibition; nor is every invalid act illicit: for instance, a testament lacking form. Yet in ecclesiastical law an invalid act must be said to be per se prohibited.

Various things to be noted. 1. The will, both by acting and by omitting an act, can observe or violate the order of reason. Wherefore, under the name of human act comes also a conscious and free omission, which can be good and meritorious, evil and deserving of punishments.

2. Although we refer human acts to the will, the intellect also has its own parts in these acts. No understanding is mere understanding, no willing mere willing; but each faculty, in various degree, conspires in every action.

3. Nor do acts exist separated as we consider them; but they are prepared in a certain continuous series of actions, and are completed by various consequences. None is without antecedent roots, none without subsequent effects. But no less than physical science, moral science must estimate continuous motion as an infinite series of disjoined or momentary motions, so that in some imperfect way it can know and explore them.

Arrangement of the treatise. The human act is essentially voluntary. In our present condition it is at the same time free, moral, and imputable. Yet per se it is not repugnant to its essence that it be psychologically necessary; and we have adduced the example of the beatific vision. Likewise the observance of precepts was psychologically necessary to Christ. For this reason liberty, morality, and imputability unto merit or punishment ought rather to be called properties of the human act as it is done by a wayfarer. Nevertheless liberty is joined more closely with voluntariety, so that a separate exposition of liberty and voluntariety would be without usefulness and not without inconvenience. Therefore this will be the arrangement of the treatise, that we treat: 1. Of the human act as voluntary and free; 2. Of the impediments of the human act; 3. Of the human act as moral; 4. Of the human act as imputable.

Summary

I. A human act, under which name also omission comes, is an act which proceeds from the will with advertence of reason. In this life this act is psychologically free; according to the estimation of reason, it qualifies our life, whence it is called moral; and, according as it is referred to another, it is meritorious or demeritorious.

II. Psychologically it is distinguished, with attention to the executing power, as internal or external; with attention to the subjective principle, as natural or supernatural. With attention to its consummation in the will or in a power moved by the will, or also with attention to the proximate or remote motive under which it is done, it is called elicited or commanded.

III. As moral, an act can be, with attention to the order of reason, right or depraved; with attention to law, licit or illicit; with attention to proportion to the agent, good or evil (in the subject, none is indifferent); with attention to relation to another, meritorious or demeritorious.

With this notion is connected liberty, which is called moral, insofar as it signifies either licitness or human possibility.

IV. With attention to further efficacy, some acts are valid, others invalid. Valid acts can be rescindable or not. An invalid act is not necessarily illicit, nor is a licit act always valid.

V. The intellect does not act without the will, and vice versa; nor do acts exist separately from the continuous actuation of human energy; and none fails to flow into the following disposition.

VI. The reason for the order to be followed is established.

Title II: On the Human Act, as Voluntary and Free

Usefulness. In moral theology one must frequently recur to the divisions of the voluntary, especially in questions on imputation, on sins, on chastity and the opposed vices, on laws, and on the sacraments. It is of the greatest importance to possess a distinct notion of intention, election, and permission; and accurately to separate the virtual, habitual, and interpretative voluntary, or that presumed for the future. The conditions of liberty must be known, so that the impediments of the human act may be better understood.

Article I: Notions and Divisions of the Voluntary and the Involuntary

I. The notion of the voluntary. The voluntary is "that whose principle is in the agent himself, he knowing the particulars in which the action is" [1]; or, as St. Thomas says more briefly (2), "that whose principle is within, with the addition of knowledge."

Moreover this voluntary is divided: from the object, from the mode by which it attains the object, from its figure or subjective account of being, from its manifestation, and finally from its objective perfection.

[1] Aristotle, *Ethic.*, 3, c. 3. - (2) 1, 2, q. 6, art. 1.

II. Divisions. 1. From the object. Since the will is a rational appetite, it follows the formal presentation of end and means, so that an act has some acts concerning the end, others concerning the means.

a) Concerning the end there can be: simple willing, or complacency in an object which is apprehended as fitting to the subject, or lovable in itself (St. Th., 1, 2, q. 8).

Then intention, in some way prosecutive of the thing. For an end is "that for the sake of which something is done."

Then fruition, that is, rest in the end obtained or the good possessed [1]. In its fruition, the will approves, and holds as ratified, the pursuit of the end (or the efforts made) and its attainment.

b) Concerning a means or means there can be: consent, by which one adheres to a judgment proposing what has seemed useful for attaining the end (1, 2, q. 15);

or election, by which, from several means, one is preferred (1, 2, q. 13);

and active use, by which powers are applied to acting.

Therefore we have voluntary complacency, intention, fruition, consent, election, execution.

And so not only acts of the will can be voluntary, but also acts of other powers, or effects; yet formally only acts of the will are voluntary; the rest are voluntary denominatively.

Moreover these things are to be observed about those acts. Use pertains to the order of execution; all the rest to the order of intention [2]. If use has been lacking, there will not be a voluntary external deed, for example the death of an enemy. Yet this death can be the object of complacency, fruition,

and thus terminate the will. If it has thus terminated it, formerly more than today, that death was called willed, although not voluntary [3].

Intention is distinguished as perfect or efficacious, and inefficacious. The efficacious is of itself connected with the existence of the object, because the means are in the power of the will and the will admits or chooses all the necessary things. If, on the contrary, it neglects to admit the necessary means, it is called velleity.

[1] 1, 2, q. 11.

[2] Therefore let us not confuse the order of intention, which comprises intention, election, and consent, with intention strictly so called.

[3] Thus in Italian *volita* is said of rain desired by farmers.

2. From the mode by which the object is attained. a) The will, as it is appetite, has, without organic transmutation, prosecutive and aversive acts, by which the eleven passions of the sensitive appetite are denominated: love and hatred, desire and flight, hope and despair, fear and daring, anger, delight and sadness [1]. Therefore, insofar as these proceed knowingly from the will, all these can be voluntary.

b) The object can be attained in itself or in another object. In itself is attained that toward which the will is immediately affected. In another the will attains what it wills only as connected with the object which it wills in itself. Moreover it can be connected as a part: as the obligation of support is part of conjugal life; as an accessory: as the vow of chastity is added to the subdiaconate; as an effect (strictly or broadly so called) foreseen together with the thing toward which the will is affected: as quarrels and blasphemies which are foreseen as going to follow from drunkenness.

If the question concerns an effect which is foreseen as going to follow but which is not loved, the voluntary is more strictly said to be in the cause only, and the effect is called merely permitted. Therefore, what must be well held, the will neither intends nor chooses what it merely permits; but permission means mere foresight without affection. Permission is active when it flows from an action on account of the concurrence of another cause which cannot be impeded; it is passive when the effect is merely not impeded.

[1] St. Thomas, 1, 2, q. 22, art. 3, ad 3; and q. 23, art. 2, c.

3. From the subjective account of being, or the figure of the voluntary, there is distinguished:

a) The voluntary on account of action, or the positive voluntary, and the voluntary on account of omission, or the negative voluntary, as when someone omits to impede what he ought to impede: for example, damage through an animal possessed by him [1].

And while we act, our act itself can be called positively voluntary; while we do not wish to act, our non-acting will be negatively voluntary.

N.B. Concerning the signification and use of several words, not all agree: this must be attended to when reading writers. Thus some call direct voluntary what is from the will positively operating; indirect, what is from the will insofar as it passes over an obligation of acting. While others call direct the voluntary in itself, but indirect the voluntary in another.

b) The explicit voluntary, which in itself is present before the mind, and the implicit, which is contained in the former. Thus the will of sorrow for sin contains the purpose of not sinning; the will of loving all contains the will of loving enemies. Thus the will of the legislator implicitly wills the law according to the true sense. This division is sufficiently akin to the distinction of the voluntary in itself and in another; but here there is more regard to attention than to intention.

[1] That which follows an omission will be called voluntary when it follows per se; permitted, when it follows per accidens.

4. From manifestation, you have the voluntary that is expressed, tacit, presumed (for the present). Expressed is what is manifested by speech or another sign ordered to this; tacit, what is gathered from an expressed concession or from some deed or omission of a deed. A superior, permitting a journey, tacitly consents that in the customary manner you seek money for yourself; an owner, who can easily dissent, tacitly consents to someone, observed by him, using his thing. Presumed for the present is what, from an inclination or disposition of the mind, is conjectured to be truly present now. A friend of the bishop from whom by letter he asked jurisdiction to be sent to him at once, after the letters have been received, conjectures that the jurisdiction has been sent.

Presumed for the future is the same as interpretative, concerning which see n. 46, c.

On the adage "He who is silent seems to consent". (R.I., 43 in 6°). In doubt, provided no reason suggests the opposite, "he who is silent seems to consent" [1]: a) in a matter which benefits the silent person without a burden; b) when some necessity of contradicting is joined with a ready faculty of contradicting. Here belongs the saying: "Knowledge and sufferance are held for expressed consent" [2]. This at least is valid in matters of slight prejudice. - c) Where several come together to deliberate about a common opinion. Those who are silent will be judged, per se, to add their assent to those consenting.

[1] The Rule of Law (142 Dig. L, 17) has this: "He who is silent certainly does not confess; but nevertheless it is true that he does not deny."

[2] Marginal note to the Gloss on § Caius, law 25, *De legatis* (D. 31, 1).

5. Division of the voluntary from its objective perfection.

a) The voluntary can be perfectly and imperfectly deliberated. The former, which is also called perfect, requires full knowledge and deliberation. Knowledge is called full insofar as, morally, all the notes of the thing are known and the mind is not subjectively impeded. The imperfectly deliberated is had in sudden movements, in a great heat of passion, in partial wakefulness.

b) The voluntary simply and according to something. The former is estimated from the object as it exists; the latter from a peculiar note which is in it. Marriage, besides the common life of spouses, is wont to bring association with parents. This can be pleasing or displeasing. If it has been appetible, marriage will be voluntary simply and according to something (that is, according to that note); if displeasing, it will be voluntary simply, but not according to something.

Quite often they call something voluntary according to something when consent to the thing is denied, although some note of it is pleasing: as if you should be unwilling to possess a thing which

you would acquire as precious, because it belongs to another; but this use seems to us less correct. For since nothing proceeds from the will, nothing voluntary is had except complacency concerning that note.

c) Formal and interpretative voluntary. The former is present when the will truly adheres to a thing proposed by the intellect. The latter is present when, indeed, no consent either was or is, but from the inclination of the mind, from the fittingness of the thing with the rational appetite now perceived, it is conjectured that consent would have been future if the object had been proposed. The interpretative will is sometimes called presumed for the future. Since this is not and was not at all in act, it can effect nothing. Wherefore a dispensation, which must loose the bond of law, can never be presumed in this way; but a permission can be presumed, with which an act, valid in other respects, obtains the due mode of subordination to the will of the superior.

d) Actual, virtual, habitual voluntary. Actual denotes assent which is now deliberately present; virtual shows itself in the effect of a prior actual will; habitual denotes a past and not retracted will, although it perseveres in no effect.

Thus, from the will of going on foot to St. Peter's, someone who knows the way well, without a conscious choice of roads, turning over many things in his mind, converses with a companion, and makes the journey: he virtually wills to visit the basilica. He who formally asked for extreme unction and then is deprived of the senses has the habitual will of the sacrament.

The virtual will possesses the same efficacy as the actual. The habitual can suffice for certain juridical or spiritual effects which do not require action.

Lugo [1] (*De Sacr. in genere*, d. 8, 15; *De Paenit.*, d. 7, n. 40) thought that the virtual will was present, but confused and scarcely perceptible, or, as we would say, subconscious. But another explanation seems preferable. The association of ideas and images brings us this facility, that by one act of command we can determine a whole series of partial actions which we have done often enough. Under a given command, every series which has been foreseen and has been effected by that command is voluntary in a manner similar to that in which the explosion will be called voluntary which is determined in a deep cavern by one who, placed outside the cavern, causes an electric contact. This alone differs: that it remains in our power consciously to break off the commanded series. Therefore, although actual willings are easily mixed in the series to be executed, nevertheless the series is virtually voluntary, insofar as it derives from the first command; and, according to the law of human action, this voluntariety is entirely sufficient.

[1] Frins still adheres to him, *De actibus humanis*, I, 53.

On the involuntary. At the same time we know what the involuntary is, and how it is divided. We shall observe this one thing: strictly, that is called involuntary which is done against the will; non-voluntary, that which is done apart from the will, insofar as the thing does not depend on the will, although it can be pleasing to it. In the broader signification, both are called involuntary.

Article II: On the Human Act as Free

On the Human Act, as Voluntary and Free

I. The conjunction of the voluntary and of liberty. In the present condition of man as wayfarer, a voluntary act is at the same time psychologically free. Only the appetite for beatitude is necessary for him "as to the determination of the act, because he cannot will the opposite; but not as to the exercise of the act, because someone can be unwilling then to think about beatitude, because even the acts themselves of intellect and will are particular" [1].

Nor in Aristotle does a word occur by which the free is distinguished from the voluntary. Whence, in this article, we consider the voluntary act merely under another respect, and we can proceed from this principle: as much as the voluntary is deficient, so much liberty is deficient; and every defect of liberty declares an act imperfectly voluntary.

We must treat of the conditions and impediments of liberty.

[1] St. Thomas, *De Malo*, q. 6, art. un.; cf. in 1, 2, d. 25, q. 1, art. 2.

II. Conditions of liberty. The use of free choice requires:

1. That reason, habitually and actually, have the ability of judging concerning the good formally taken, and concerning the proportion by which a particular good fits the subject and his inclination or appetite. Otherwise, the object cannot be proposed as indifferent, that is, as such a thing as is at the same time appetible and incapable of satisfying the appetite. Now in that indifference of judgment the first root of liberty consists.
2. That reason be unimpeded for following the direction of the will, under whose direction things are considered under various aspects and diverse practical judgments are effected. For since the will is a rational appetite, man wills or prefers nothing which at the same time he does not judge to be to-be-willed or to-be-preferred: wherefore between our willing and our final practical judging there is a necessary concord. And so, unless the judgment itself is in the power of the will, neither will the proper act of willing be in its power.
3. That reflex knowledge of the object and of the acts be had. For without conscious possession, the use of dominion cannot be had.

To say the same thing more briefly: free choice requires an intellect developed and unimpeded for representing, docile for obeying, and reflex consciousness. And so:

a) whatever conquers the intellect;

b) whatever carries away the will, impedes the use of free choice;

c) nor can that be free which does not proceed from our will.

Those impediments and limits of free choice are now to be considered by us, first in the healthy man, then in the sick or badly affected man.

Summary

I. The voluntary, or "that whose principle is within with the addition of knowledge," is divided under various respects.

II. According as end and means are objectively proposed to the will, the will can love the end by simple complacency, intend the same, and, when it is obtained, enjoy it; but the means it either, by consenting, merely accepts as they are proposed, or by consulting among several chooses the better; finally it uses the powers for applying the means.

III. According to the mode of attaining objects: already, without bodily mutation, it has the eleven prosecutive or aversive movements of the sensitive appetite; moreover, as rational appetite, it wills certain things in themselves, or directly, certain things in another, or indirectly. And an effect foreseen with an action or omission and yet not loved is called permitted (actively or passively).

IV. From external species, the voluntary is distinguished positively, by action, and negatively, by omission: which some call the indirect voluntary.

Then there is the explicit voluntary, and the implicit, which is contained in the former.

V. From its manifestation, the voluntary can be formally expressed, or tacitly signified in some deed or omission, or be presumed for the present, that is, conjectured from an inclination of the mind.

From this is gathered the prudent use of the adage: He who is silent seems to consent.

VI. According to its varied perfection, there is distinguished the perfect voluntary, to which neither knowledge nor deliberation is lacking, and the imperfectly deliberated voluntary; then the voluntary simply, which embraces the object as it is in the concrete, and according to something, which embraces the same under a definite note to which attention is given. There is also the formal or true voluntary, and the interpretative voluntary, which is not, but would be if the object were proposed: it is called presumed for the future. Finally there is the actual voluntary, in present act; the virtual, in a series efficaciously commanded; and the habitual, which once was and has not been retracted: this voluntary can have force for no physical effect, but indeed for juridical effects.

VII. From the voluntary we know what, and of how many kinds, the involuntary is.

VIII. Psychological liberty, which is now had in every human act, requires as conditions an intellect developed and unimpeded for representing, docile for obeying, and reflex consciousness.

Title III: Impediments and Limits of Free Choice

Usefulness. It is of no small moment, and often of no small difficulty, that a moral theologian, for example in the sacrament of penance, be able prudently to discern guilt, and to judge concerning the value of promises and of obligations undertaken. To this end the present title has been written.

Account and division of impediments. 1. Although we speak of impediments of the intellect and will, nevertheless the spiritual faculties cannot properly either fall sick or be affected by an intrinsic impediment. Therefore all impediments cohere with our present necessity of using the body and material powers even for the noblest acts. And so by the same bonds by which the senses, whether interior or exterior, are bound, the intellect itself is externally bound. Now we distinguish the impediments and limits of free choice in a healthy man, and the impediments which must be ascribed to a morbid state. The former are either common to all, insofar as all men per se experience those states in which the higher faculty, impeded in its act, can make no free act, at least not perfectly; and accidental impediments, such as ignorance, which bring it about that, not indeed per se but per accidens, a faculty, even when unimpeded for its own acts, nevertheless does certain things involuntarily.

Chapter I: Limits of Free Choice and Impediments in a Healthy Man

Article I: Limits and Impediments Common to All

Distribution of the argument. Both by age, sleep, and the state of drunkenness, even the free choice of a healthy man is commonly impeded. Moreover various movements of appetite anticipate deliberation, beyond which psychological liberty cannot extend itself.

Hence:

I. Common impediments. 1. A child is not free. For, the development of the brain being deficient, he lacks conscious possession of universal notions.

2. One sleeping is not free. For, according to the varied perfection of sleep, the senses are impeded more fully or less fully. Nor is liberty restored by any dream. For in a dream phantasms are joined in the fatal order in which either they were already previously connected, or by some accidental fact, as for instance by hearing a sound or by contact with a heavy or cold thing; one thing succeeds another [1]; and, the normal communication between the higher centers and external perceptions being broken, consciousness cannot judge concerning the objective state; finally every conscious direction is taken away from the will. If sometimes we seem to ourselves to deliberate and to act freely, we rather dream the use of free choice than truly have it. If we resist an evil suggestion, it is an indication of virtue which, confirmed by long exercise, has phantasms of its own acts sufficiently strong that they are presented together with the phantasms of the passions and of lower propensions. Yet men are accustomed to be led through dreams more by instinct than by acquired virtue. Nor are the commands of dreams completed by execution.
3. One perfectly drunk is not free in act, although the drunkenness could have been voluntary.
4. One imperfectly awake does not yet enjoy an unimpeded use of the exterior senses and of the interior sense. And by those impediments of the senses the higher powers are prohibited from procuring for themselves the supplements of strength which would be necessary for overcoming the temptation or suggestion [2]. Therefore the efficacy of command is deficient, and a perfect consciousness of things and of self is not yet present. Wherefore, if the respect of moral goodness or malice was not present before the mind, then there will be no liberty; but if thought about a good action or about moral obligation has entered the mind, the will which with diminished strength overcomes the temptation can greatly merit; but if it has yielded to the temptation, it cannot be gravely blamed. For as long as man is prohibited by his subjective state from estimating and intending the ultimate end according to its dignity and with fitting efficacy, he cannot by his own proper act determine concerning that end, so that his disorder is only venial.

[1] Often two recent memories are mingled. A friend occurs; then, with another, a question was raised about a meal: we dream that we dine with the friend.

[2] Helps are sought by diverting the mind to other things, by renewing purposes or vows.

On non-deliberated movements. 1. In the sense itself, various concupiscences [1] spontaneously follow sensible apprehension. These are not from the will. Wherefore only the act by which those concupiscences thereafter either are admitted or fostered, or are repelled, can be free. With what obligation of repelling: this will be said in the proper place.

2. The will itself, as it is the appetite of man, experiences in itself spontaneous affections toward all things which also by lower reason are proposed in some way as goods of man. (We call lower reason that which proposes motives drawn from the present goods of this life and of the world; which goods, moreover, with the aid of sense, are represented more vividly.) Those movements of the will, since they precede comparison with the motives of higher reason, or considerations of the honorable good, are not from the will as it is rational appetite. Wherefore those movements, which are called first-first, are outside the limits of liberty and are not governed by moral law.
3. Moreover the will has, even in the state of wakefulness, on account of distraction of mind or the force of involuntary concupiscence, imperfectly deliberated acts, concerning which one must pronounce as concerning the acts of a half-sleeping man. Wherefore those movements, second-first, if good, will be very praiseworthy; if they tend toward evil, they cannot induce grave guilt.

[1] We are not treating here of concupiscence insofar as, according to its force, it makes the use of free choice more impeded, but of spontaneous concupiscences which can even aid honorable appetite: for example, the movement of love toward offspring.

Article II: Accidental Limits and Impediments

§ 1. On Ignorance

I. Notion and Divisions

Ignorance is the privation of knowledge in some way owed; and thus it differs from nescience, which is the simple negation of knowledge. But error is a false judgment. A layman is nescient; a confessor is ignorant of moral theology. Both err when they hold fornication to be a venial sin. Inadvertence, finally, is actual inconsideration or oblivion of habitual knowledge.

Ignorance is divided with respect to the ignorant subject and his circumstances; with respect to the object ignored; and with respect to the act of the will to which it is referred or which it affects.

1. With respect to the subject, ignorance is invincible which could not be dispelled by any diligence whatever, or at least not by moral diligence. Moral diligence does not require that all means be employed, but denotes a human mode of diligence, accommodated to our condition, which, varying according to the varied gravity of the matter, prudent persons are accustomed to employ in their own affairs and to require from others. Therefore not only perfect ignorance, which excludes suspicion of the truth, can be invincible, but also imperfect ignorance, which is compatible with a doubt that has been judged contemptible.

Ignorance is vincible which could have been removed by moral diligence. Again this ignorance is of negligence, when someone is turned away from the study of knowing by various other reasons; it is

affected when someone directly wishes to be ignorant. And the name affected ignorance has customarily been reserved for ignorance which is blameworthy. Yet a certain will of being ignorant can also be praiseworthy. For although knowledge per se is good and advantageous, in the present condition of our infirmity certain things are happily unknown, for example, for the greater guardianship of chastity, for the easier exercise of charity toward one's neighbor.

According to the degree of negligence, ignorance is crass or supine, which has not seized even an easy occasion of knowing; it is simply vincible, which has omitted only sufficient application. The theologian who in no way applies himself to acquiring the science is crassly ignorant of it; he who is not sufficiently diligent is simply ignorant of it. He is deceived by crass ignorance who, needing to know whether midnight has passed or not, does not even consult the clock which lies near him; he labors under simply vincible ignorance who neglects to rise from bed and take a few steps to consult the clock.

2. With respect to the object, law, fact, and penalty can be ignored.

Ignorance of law is had in two ways: more strictly, when that which is contained in the law is unknown; less strictly, yet properly, when the very existence of the law is not known. This law can be natural, positive divine, or positive human: either ecclesiastical or civil.

Ignorance is of fact when the conditions required for the application of the law are unknown to be present.

Ignorance of penalty is that ignorance of law by which it comes about that you do not know that a special penalty has been annexed to some delict.

He labors under ignorance of law who does not know that postulants can and ought to be received within the enclosure of nuns (c. 540, § 3), or that a law of pontifical enclosure exists for nuns; under ignorance of fact, he who does not know that such a religious house is a monastery of nuns; under ignorance of penalty, he who does not know that violation of that enclosure has been sanctioned with excommunication.

3. With respect to the act of the will, ignorance can antecede or follow the act of the will, according as it has a voluntary cause or not; it can be a cause [removing the prohibiting thing [1]] of an act which without ignorance would not have been done, or exercise no account of causality, or merely accompany an act which, with attention to the disposition of the will, would not be prohibited by knowledge of the law or fact.

Therefore there is a twofold respect: in the former, the origin of ignorance is considered; in the other, its effect; whence we would have a twice two-membered division. Yet by received usage one three-membered division is substituted for the two two-membered divisions in this way: antecedent is said of ignorance which is invincible or involuntary and at the same time a cause of willing; concomitant, that which is not a cause of willing; consequent, that which is directly or indirectly voluntary and at the same time is a cause of willing.

[1] Since ignorance is a non-being, it effects nothing positive, but removes the obstacle which knowledge would oppose. Therefore it is called removing the prohibiting thing.

II. What Invincible Ignorances Can Exist

That positive laws can be invincibly unknown is outside controversy and is clear per se. That there are remote conclusions of natural law which can be invincibly unknown is no less manifest. For there are many questions, for example, concerning the obligation of restoring in this or that case; concerning the origin of such an impediment of marriage (for example, consanguinity in the first degree of the collateral line), about which learned men themselves have disputed with one another for centuries and do not agree. On the contrary, that certain first principles and almost immediate conclusions, for example, that good must be done, that evil must be fled; that homicide and adultery generally are not lawful [1], are known by all men of sound mind, is also not doubted. There then remain several principles or corollaries not so proximate and not so remote, whose ignorance is judged more severely by some than by others. And today we rather incline to the more benign side. Thus almost no one now doubts that the malice of pollution can be unknown for a long time by an adolescent or young man. Nor are there lacking those who think that certain onanistic abuses between spouses, at least in certain circumstances, can be excused in good faith.

[1] Indeed adultery is never permitted by natural law; but some can now be ignorant of that absolute universality of the prohibition: wherefore we have excluded invincible ignorance only from its general prohibition.

What habit effects. A habit for the most part does not remove sufficient knowledge of a good or evil act [2]. Nevertheless "it can happen that someone having a vicious habit sometimes acts not from habit, but from a passion rising up or even from ignorance." (St. Thomas, 1, 2, q. 78, art. 2.) This happens more easily to those who wish to correct the habit and yet, impatient or distracted, pour out certain blasphemous or even scurrilous words, or perform brief touches on themselves. Concerning this matter, this too seems to be observed: the knowledge which is enough for a good act remains more easily with a good act than, with an evil habit, is preserved the knowledge which is necessary for an act at least gravely evil: both because an upright man wishes more formally to use his habit, so that he would be said by St. Thomas, l.c., to "operate from the habit itself"; and because less perfect deliberation is required for a good act than for an act gravely evil.

"Some obvious circumstance of malice, which the agent habitually knows, can scarcely ever be handed over to oblivion or inadvertence in such a way that there is not sufficient knowledge for contracting malice. Thus, for example, who would not laugh at a priest or religious who, after sinning against chastity, said that he had in no way attended to the vow or to the sacred state?" (Lehmkuhl, *Theol. mor.*, I, 77, 3.)

[2] Cf. St. Alphonsus, *De actibus humanis*, XIV; *Theol. mor.*, l. 8, n. 127; l. 6, n. 4, § tertio.

III. The Guilt of Vincible Ignorance Itself, When It Is Evil

1. The gravity of that guilt must be judged from the conscious degree of negligence. Moreover, that negligence can be the omission of actual consideration, whose necessity, nevertheless, someone notices, whether this flows from habitual and conscious inconsideration or not; and it can be habitual ignorance of things which, whether by a common obligation or by a special obligation of state, one must know according to every time. (St. Thomas, *De malo*, q. 3, art. 8.)

Therefore he can be blameworthy who is accustomed to act precipitately and does not apply himself to his own amendment, and he who, through his own sloth, does not acquire the knowledge required

by his office.

How many sins there are in number, in the latter case, is not so easily defined. For as often as someone wished to be ignorant, or formally or virtually neglected an occasion of learning, so often will he sin on account of ignorance.

Moreover, as often as an ignorant person has committed himself to a probable danger of inflicting harm, for example by exercising an office, so often also will he sin unless he is excused by necessity. Wherefore he ought to abstain from exercising the office until he can exercise it without probable danger. Cf. Ballerini-Palmieri, *Op. th.*, I, Tr. 1, c. 3, n. 55.

As to the species of the sin, either there is had a special precept of knowing, and then from the nature of that precept its violation has its species. Wherefore blameworthy ignorance of the articles of faith will be opposed to faith itself, although the ignorant person does not sin by formal heresy, unless he is so disposed in act that he would not adhere even to a known definition of the Church [1].

Or that precept does not exist; and then the sin of ignorance receives its species from the transgressions which are foreseen in confused fashion as going to follow. For every law which commands or forbids a work, implicitly, in order to that work, imposes knowledge of itself. Cf. Bucceroni, *Institutiones theol. mor.*, I, 52.

[1] Cf. Lugo, *De fide*, d. 20, n. 182, 191.

IV. What Ignorance Effects

Effect of ignorance on the voluntary. 1. Antecedent ignorance causes the good or evil act which has been produced by the ignorant person to be involuntary simply. For it is not voluntary in itself, and it denotes such a disposition of the agent that, had he known, he would have acted otherwise.

2. Concomitant ignorance, as such, renders the act non-voluntary, although not involuntary [2]. For involuntary, strictly, is what is repugnant to the will. But what is done with concomitant ignorance would be done even knowingly.

3. Consequent ignorance, as such, makes the act voluntary in the cause, yet in itself involuntary, since, with knowledge present, it would be omitted.

But what if it is affected, or directly voluntary in itself? That ignorance, if it concerns the morality of the thing, is in itself a sin which, according to the thing in question, can be grave or light. That it renders the act more voluntary than simply vincible ignorance is manifest per se. Moreover, it is a sign of great propensity to that thing for the sake of which someone wishes to be ignorant: for example, to reading a book about which he wishes not to know whether it is prohibited; and in this respect it is said, rather improperly, to increase the voluntary. But with respect to the very violation of the prohibiting law to which the ignorant person exposes himself, it betrays a greater or lesser affection than if he sinned knowingly, according to the motive by which he is led. If from contempt of authority as such, it will be a sign of worse affection; if, on the contrary, he wishes to be ignorant lest, being conscious of the matter, he should in some way be delayed from sin, the affection can be less than that of one sinning knowingly. Cf. Ball.-Palm., I, tr. 1, n. 51; Lehmkuhl, I, 76.

Even in good acts directly voluntary ignorance demonstrates a great affection for a praiseworthy action. Thus he betrays a very beneficent mind who wishes to be ignorant of the habits of a beggar

lest, perhaps some malice of his being detected, he should give alms less promptly.

Finally, by a universal account, an act done with ignorance is less voluntary than one which is done knowingly. Yet except ignorance directly chosen for this reason, that the note unknown is utterly disregarded. For he wills a good action more, for example, who refuses to consider its danger because he intends to assist the sick or devote himself for his country with every danger; he wills more to transgress a precept who, from contempt of the precept, affects ignorance of it.

[2] St. Thomas, 1, 2, q. 6, art. 8.

Effect of ignorance on merit and sin. Because the condition of merit and sin is voluntariety, ignorance, other things being equal, removes, diminishes, or increases merit or sin by precisely the same account by which it removes, diminishes, or increases the voluntary. Wherefore invincible ignorance, whether of law or fact, whether antecedent or concomitant, necessarily removes sin.

Whence Augustine: "So far is sin a voluntary evil, that in no way is it sin if it is not voluntary. And this indeed is so manifest that no fewness of the learned, no multitude of the unlearned, dissents from it" [1]. Yet Baius denied this concerning infidelity, prop. 67: "Purely negative infidelity in those among whom Christ has not been preached is a sin"; which St. Pius V, by the Bull *Ex omnibus afflictionibus*, 1 Oct. 1567, condemned among those proscribed as "heretical, offensive to pious ears." (*Denz.*, n. 1068.) But the Baians and Jansenists denied the same thing concerning all natural law, prop. 2, from the 31 which were proscribed by Alexander VIII, decree of 7 Dec. 1690, "as rash... and heretical," and it sounded thus: "Although invincible ignorance of natural law be granted, this, in the state of fallen nature, does not excuse one operating from it from formal sin" (*Denz.*, n. 1292).

Yet do not for this reason think that the unknown law of nature is violated without detriment. For not only is the ignorant person deprived of the merit and also of the connatural influence of a good action, but also, since every act materially but intrinsically evil is unnatural or contrary to nature, through a certain trace which every action leaves in man, it is opposed to the good and happiness of the agent. Therefore they err who rejoice over a sin committed ignorantly, or who grieve that they do not live among less cultivated nations, where they could do several things ignorantly against the law of nature. Ignorance of the natural law can never be apprehended as good.

And in a similar way an act materially good is not useless to the ignorant person, although unknown goodness does not produce merit.

But simply vincible ignorance diminishes merit or sin. That is, he who proposes to do something which he suspects to be good or which he fears may be evil, by this intention either merits or sins, yet less than if he had perceived the goodness or malice; nor does it pertain to merit or sin whether the act is in truth materially good or evil. For the true object of the will is the act as it is apprehended by the intellect.

Finally, directly voluntary ignorance for the most part diminishes, sometimes increases, merit or sin, as was explained above concerning the voluntary.

[1] *De vera religione*, c. 14, n. 27 (P.L. 34, 133).

Effect of ignorance on the penalties of the external forum. Modern civil laws are not accustomed to establish any mitigation of penalty on account of ignorance of the law or of the penalty.

Among them ignorance of law is said to harm. From this, however, in pronouncing a penalty, the judge is not prohibited from admitting some excuse of ignorance; also in fiscal matters, friendly settlements are admitted on account of ignorance of an illicit act.

But in the canonical forum, far greater account is had of ignorance, at least if this can be sufficiently proved, for "ignorance or error concerning the law or the penalty is generally not presumed" (c. 16, § 2).

Moreover these principles are laid down. C. 2199: "All causes which increase, diminish, or remove fraud or fault, by that very fact increase, diminish, or remove the imputability of the delict."

C. 2201, § 1: "The violation of an unknown law is not imputed at all, if the ignorance was inculpable; otherwise imputability is diminished more or less according to the culpability of the ignorance itself."

C. 2218, § 2: "Not only those things which excuse from all imputability, but also those which excuse from grave imputability, likewise excuse from any penalty, whether *latae* or *ferendae sententiae*, even in the external forum, if the excuse is proved for the external forum."

Concerning penalties *latae sententiae*, moreover, these things are established: 1. Affected ignorance, whether of the law or only of the penalty, excuses from none. 2. "If the law has the words: he shall have presumed, he shall have dared, knowingly, studiously, rashly, with deliberation he shall have acted, or other similar words which require full knowledge and deliberation, any lessening of imputability, whether on the part of the intellect or on the part of the will, exempts from penalties *latae sententiae*." 3. If it does not have those words: crass or supine ignorance exempts from none; ignorance not crass or supine, whether of the law or only of the penalty, excuses from medicinal penalties, but not from vindicative ones. Cf. c. 2229.

What those penalties are will be said later. Let us only observe that excommunication is always a medicinal penalty.

Effect of ignorance on the value of certain acts.

Insofar as voluntariety is required for value, so far, and neither more nor less, ignorance will be able to obstruct the value of an act. Thus he satisfies the precept of hearing Mass who hears Mass, not knowing that it is Sunday: because the intention of fulfilling the precept is not itself prescribed; he validly baptizes who does not know that baptism is a sacrament, provided that, by performing the essential rite, he wills to do what the Church does: because nothing more ought to be voluntary; baptized persons marrying validly confer upon themselves the sacrament who do not know that matrimony is a sacrament, because they will the contract which is the sacrament; but those contract matrimony invalidly who have been ignorant that matrimony is a permanent society between a man and a woman for procreating children (c. 1082, § 1), because the substance of the contract must have been admitted voluntarily; one half-asleep makes a vow invalidly, because perfect deliberation is required for a vow.

Whatever we have said about habitual ignorance is valid for inadvertence; indeed, ignorance has no effects except insofar as it begets inadvertence.

§ 2. On Concupiscence and Added Habit

In order we shall speak about concupiscence, then about the added force of habit; then about certain supplementary observations.

I. On Concupiscence

We shall hand down the notion and divisions of concupiscence, then its effects.

A. Notion and Divisions

I. Notion. In this place, concupiscence will be understood to be a movement of the appetitive sensible power which is from the imagination of good [1].

Therefore it comprises the passions of the lower appetite. By that appetite we are inclined to pursue sensible good and consequently to flee sensible evil. It is an aid to us; and, in our present condition, also an impediment. It is an aid insofar as it joins attraction to the various necessities of the body, which must be served, and to various duties; insofar as, by a consonant movement, it confirms the will and obeys it. It is an impediment when, anticipating the judgment of reason, it is borne by blind impulse into the delightful even when forbidden. And then there is had concupiscence in the stricter signification, which is that tinder, deplored by the Apostle, of depraved desires and the stimulus of sins. The will has the duty and noble pursuit of coercing this and of ruling the passions.

[1] Cf. St. Thomas, 1, 2, q. 30, art. 1; and in I. 3 Sent., d. 20, q. 1, art. 1.

Divisions. Therefore antecedent concupiscence is distinguished, which precedes the consent of the will and draws it to consenting; and consequent concupiscence, which, in the order of causality, follows the act of the will, and that in two ways: by mere resultance, by which higher acts overflow into the lower powers, as when we are sensibly moved by affection toward God or Christ; or by studious excitation, as when St. Ignatius, in the contemplation on the Passion of the Lord, exhorts us to excite ourselves with great effort to sorrowing, sadness, and weeping. (*Spiritual Exercises*, Third Week, on the Last Supper.)

B. Effects on the Voluntary, Merit, and Sin

I. Effect on the voluntary. There can be so great a force of concupiscence that it permits no deliberation to exist. What we do thus cannot be voluntary or free in itself (1, 2, q. 77, art. 7), but only in the cause, if we voluntarily approached the occasion.

This case excepted, the act toward which we are borne by antecedent concupiscence is less wholly from the will; and consequently, the greater and stronger the concupiscence is, the less per se is the act voluntary. Yet because concupiscence exercises no efficiency upon intellect and will, but merely strikes the intellect by the allurements of the object and intentionally snatches the will, both these faculties remain intact and preserve free choice. Wherefore in the struggle they can resist and seek helps for themselves.

Certainly the act contrary to concupiscence is fully voluntary; but since it is wholly freed from the influence of concupiscence, this is not the proper place concerning it.

Consequent concupiscence by resultance is accustomed to demonstrate an intense will, and thus is said to increase the voluntary. Although sensibility, according to temperament itself and the

condition of the body, is readier for act in one person, slower in another.

Finally, consequent concupiscence by direct intention increases the voluntary, since it makes the very movement of concupiscence voluntary.

II. Effect on merit and sin.

Antecedent concupiscence per se does not remove but diminishes the merit of a good act to which we are sensibly enticed, and the sin to which we are drawn, by the same account by which it diminishes the voluntary.

Consequent concupiscence by resultance strictly increases merit or sin only when we consent to it, as we are accustomed to consent when concupiscence conspires with the will; consequent concupiscence by direct intention necessarily increases merit or sin.

II. On the Added Force of Habit

Habit, just as through facility of acting it begets inconsiderations and forgetfulnesses, so also it generates a propensity for repeating similar acts. Hence, once habit has been strengthened, virtue sometimes brings it about that even in sleep we repel depraved suggestions. On the contrary, an evil propensity sometimes seems to have become so great that, for some time, persons habituated seem to labor through their own fault under a certain moral impotence of avoiding every grave sin.

Moral impotence is that which indeed leaves sufficient liberty for acting rightly in individual acts, yet in such a way that, if the whole series is considered, that is, in the case, if the series of temptations unfolds itself, in moral estimation it is certain that man will fail or sin in some things. Pious perseverance then will either obtain a greater grace, or gradually restore normal conditions, so that there is no longer need of special aid.

III. Supplementary Observations — A. The Present Infirmity of Man

Medicinal grace. So great is the present infirmity that for overcoming grave temptations we need grace which is called medicinal, insofar as it makes man unimpeded for conquering temptations. Yet that grace, at least in the just and the faithful, is actual grace itself of the supernatural order. And we greatly doubt whether purely medicinal graces should ever be admitted.

B. Various Precepts and Counsels Concerning Concupiscence

1. On depraved movements and phantasms. Since deliberation concerning the end of man can be established only in the higher faculties, disorder concerning the end, or mortal sin, cannot per se be had in the sensitive part. Wherefore if someone experiences depraved movements or lustful phantasms of which he is not the cause, and behaves passively, that is, neither repels nor admits them, per se he is not gravely blameworthy. Yet if they are graver or incentive, he will have to elicit at least an act of displeasure, lest he incur proximate danger of consent, or even turn his attention to other things. This indirect and quiet resistance is often more efficacious and useful than direct resistance through even exterior acts, which disturbance is accustomed to accompany. Yet he is to be praised who physically restrains or, by inflicted pain, extinguishes a shameful movement, although this is not commanded per se. Indeed, to oppose continuous resistance to a lasting temptation, even by the mere dissent of the will, is not

necessary. And for those who are accustomed to be troubled by temptations, this counsel will often be more useful: that outside temptation, for example in the morning barely awake, they strengthen the mind by purpose and prayer, diligently guard the senses, and then, in temptation, attempt to apply the mind, without anxiety, to honorable things, customary studies, and business. It will also be especially useful to foster the love of charity by meditation and by devotion to the Blessed Virgin, and to exercise acts of humility and mortification of the senses. Even when the danger of consent has been shut off, he who permits inordinate movements which he can easily impede seems to sin venially on account of that tolerated inordination.

Catholic authors agree more practically than speculatively. Cf. Laymann, l. 1, tr. 3, c. 6, n. 8; La Croix, l. 5, n. 109-112.

2. One must not speak in the same way about movements of the will toward an evil thing: not to break them off after full advertence would be to continue those same movements and consequently render them deliberated; which in grave matter would be grave. Cf. Lehmkuhl, I, 83.

Passive Resistance or Not. In carnal temptations and in those against faith, a certain kind of positive resistance is utterly to be rejected, namely, that the temptation be voluntarily excited in order then to repel it strongly. Nor, where there is graver danger of mortal fault, is a voluntary quasi-repetition of any temptation to be advised. But in less dangerous matters of impatience, moderate aversion, anger, envy, gluttony, etc., it will be lawful to excite concupiscences and, as it were, provoke them to battle, in order to defeat them more strongly, until full victory is won. It will also help to oppose contrary acts to the passions. (Cf. the book *Il combattimento spirituale*, c. 13.)

Consequent affections are not fictitious. Today there are not lacking those who think that the sensible affections which are obtained by voluntary effort toward good and holy things are artificial and almost fictitious, as though the spontaneous movement of the senses alone were natural. But if the natural unity and perfection of man subjects the lower appetites to the higher, nothing is more natural in man than that sense should follow the command of reason and will. Only then will the excitation be fictitious, if it has been effected by false reasons or by an insincere will.

§ 3. On Force or Violence

I. Notion and Division

I. Notion. While spontaneous is said of whatever is done according to a natural tendency, force or coercion is a motion whose principle is outside, while he who suffers resists to the contrary.

II. Division. The coerced absolutely or simply is that to which one resists fully but fruitlessly. Cf. Wernz, *Matr.*, n. 260, 261. But the coerced according to something is that which by greater resistance could at least partly have been impeded; or that which the sufferer, although he cannot resist, suffers not wholly unwillingly.

The will cannot be coerced: he who wills does not resist. Exterior powers can be coerced, as is manifest; and also interior faculties: phantasy, the sensible appetite, for example by a good or evil

angel. For although the coerced act of appetition is done according to the tendency of the lower appetite, nevertheless it is produced while the will is unwilling or resisting, so that the man suffers coercion.

II. Effect on the Voluntary and on Merit or Sin

Absolute force effects the involuntary (Cf. can. 2205, § 1). Coercion according to something diminishes the voluntary more or less, according as the coercion itself was greater or lesser, or according as the will acquiesced more or less (Cf. St. Thomas, 1, 2, q. 6, art. 5, ad 2).

The omission of resistance, according to the varied cause, can be blameworthy, inculpable, or praiseworthy. And say the same concerning the assent which the will confers, not indeed by acting, but by willing to suffer. Thus Christ and several Martyrs, by the most willing will by which they underwent death, merited exceedingly. On the contrary, a virgin oppressed by force sins if she consents internally, although she does not sin by the sin of complicity.

You will ask how much one ought to resist him who inflicts force and proposes indecent things? For he who inflicts force sometimes himself alone intends to complete the evil action. Thus a thief, a murderer, is accustomed to act; thus acted the slayers of Christ the Lord: then the obligation of resisting or fleeing is one thing in one case, another in another, and can also be none [1]. But sometimes participation [2] in the evil action is demanded: for instance, that the sufferer offer incense to idols, or admit fornication or adultery. Then it is not enough that the one suffering force dissent internally, but besides this he must abstain from every action by which he seems to favor the depraved counsel [3], and oppose every positive resistance which is useful or which averts scandal of consent or danger of consent. Therefore they judge that a woman oppressed is per se obliged to defend herself by cry and by the powers of the body. "But if this positive resistance is useless or too difficult, indeed dangerous, she is excused from applying it, provided she can avoid consent." Noldin, *De act. hum.*, n. 58.

[1] Thus, in Plato's dialogue *Crito*, Socrates is said to have been unwilling to flee, lest he should seem to despise the law.

[2] It must be judged morally what one can positively perform without the scandal of an omission which seems voluntary: for example, to climb a ladder, etc.

[3] Unless the question concerns the violation of exterior goods, and someone can, on account of threatened menaces, cooperate with a robber without formal injustice.

§ 4. On Fear

I. Notion and Divisions

Notion. Not with every absolute force, but with conditional force, or force according to something, is fear connected as an ordinary effect. It is defined: a trepidation of mind on account of an imminent or future danger (L. 1. D. IV, 2). Therefore force and fear are customarily treated conjointly. Harm in one's own goods is equated with personal danger, proportion being observed.

Division. Fear is divided: 1. From its degree or quality: into fear disturbing the use of reason, which takes away the voluntary; and into fear not disturbing it, which gives place to deliberation and consent. The motive of this latter is flight from an apprehended danger or harm. This latter again is divided into grave fear, which absolutely, that is, with the nature of the evil considered, or relatively,

that is, with attention to the age, sex, and disposition of the person, is accustomed vehemently to affect the mind; and into light fear, which is the dread of a slight danger, or even of a great one, but one not probably impending. Fear absolutely grave is said to fall upon a constant man.

Reverential fear, or the fear of displeasing a father or Superior, or of offending him, is in itself light; but easily, from added circumstances of threats, importunate prayers, long-lasting enmities which are foreseen as future, it is converted into grave fear. Controversies about the nature of reverential fear are to be explained by confused notions rather than by the objective obscurity of the thing.

2. From its cause, fear is divided into fear from within and fear from without, according as it has a cause interior or exterior to the one fearing. But a necessary exterior cause, such as a fire or shipwreck, is practically assimilated to an interior cause.

Fear inflicted by an exterior free cause is again distinguished as just or unjust: it is just if, with attention to the matter and the manner, the one inflicting fear has used his right; unjust, if, at least by reason of the manner, he has violated justice. Thus one who, after receiving an offense, threatens the offender with a lawsuit and legitimate penalties inflicts just fear; one who threatens grave private vengeance acts unjustly by reason of the manner.

Sometimes, moreover, it must be considered whether fear was or was not inflicted in order to extort consent to some certain thing.

II. Influence on the Voluntary and on Acts

I. Influence on the voluntary. Omitting fear by which reason is disturbed, those things which are done from fear are voluntary simply, and for the most part involuntary according to something. They are voluntary simply, because deliberation is not lacking; for the most part they are involuntary according to something, because what is done from fear alone is not of itself lovable, indeed it brings sadness. Yet other reasons besides fear can accede, on account of which the action becomes pleasing; and the very reason of fear can require that every involuntary element be excluded. Thus sorrow for sins which is elicited from fear of divine vengeance virtually excludes every affection for sin. For while affection for sin remains, divine vengeance remains to be feared.

II. How it operates. Fear also can operate beyond its own power as an impulsive cause, provided powers are supplied from elsewhere. Thus, although an act of charity is not contained in the power of fear, a man can be moved by fear to accept the grace of an act of charity.

III. The guilt of one acting from fear. He who has acted badly from grave fear sins less, yet gravely, while there remains a grave obligation which, because of fear, is placed after another consideration; and even in the external forum he is judged more or less worthy of pardon. In canon 2205, §§ 2 and 3, these principles are established: "Fear... grave fear, even only relatively grave... for the most part completely takes away the delict, if the question is of merely ecclesiastical laws. But if the act is intrinsically evil (1), or tends toward contempt of the faith (2) or of ecclesiastical authority (3), or toward harm of souls (4), the causes of which in § 2 diminish indeed the imputability of the delict, but do not take it away." The agent will always be excused, however, if the law by the words "if he shall have presumed" or similar words requires the fully voluntary (c. 2229, 2°).

Wherefore, with attention to fear, the judge will temper the penalty (canon 2218); and grave fear will excuse from penalties *latae sententiae*, unless, however, "the delict tends toward contempt of the faith or of ecclesiastical authority, or toward public harm of souls" (2229, 3°).

IV. Acts invalid from fear. By law, at least positive law, several acts done from fear become invalid:

a) "Invalid... is a marriage entered upon because of force or grave fear inflicted from without and unjustly, from which, in order that one may free himself, he is compelled to choose marriage" (c. 1087 § 1°);

b) "They are invalidly admitted to the novitiate... who enter religion induced by force, by grave fear..., or whom the Superior receives induced in the same manner" (c. 542, 1);

c) For the validity of any religious profession it is required that... "4° the profession be emitted without force or grave fear..." (c. 572 § 1);

d) "A vow emitted from grave and unjust fear is null by the law itself" (c. 1307 § 3);

e) "A renunciation made because of grave unjust fear inflicted... is void by the law itself" (c. 185). There it is a question of the renunciation of an office; and the same holds concerning the renunciation of a benefice.

V. Although an oath extorted through grave fear and sacred ordination accepted because of fear are said to be valid, nevertheless an oath "can be relaxed by an ecclesiastical Superior" (c. 1317); and he who, after he received a sacred order coerced by grave fear, has not ratified the ordination once the fear has been removed, has contracted no obligation of celibacy and of the canonical hours, and will obtain from the judge that he be reduced to the lay state (c. 214, § 1).

Finally this general rule is established: "Acts placed from grave fear unjustly inflicted... are valid, unless something else is provided by law; but they can, according to the norm of cc. 1684-1689, be rescinded by sentence of the judge, whether at the petition of the injured party, or ex officio" (c. 103, § 2).

N.B. Concerning the individual cases in which acts are weakened, at least by positive law, on account of grave fear, a more distinct treatment will be given in its own place.

III. On Avoiding "Phobias"

By the name "phobias" commonly are meant fears vain in themselves, by which not a few persons today are struck and are impeded from various acts. They are vain, however, insofar as they exist beyond the merit of the cause, or even without a cause. These "phobias" are accustomed to arise in a physically weaker subject through the occasion of some fact, accident, or narration by which he has been greatly moved. In act they are not rarely invincible, and then they will excuse from sins of omission. Prudent psychotherapy, which for the most part will not be too direct or violent, must be applied to remove them, diminish them, or at least restrain them lest they become worse.

But it will be more useful by wise education to render the mind immune from them beforehand. Therefore parents will take care that by no tales are children led or disposed to vain fears; they will forbid them books or spectacles by which the phantasy is excessively excited; indeed they will provoke them to a certain moderate boldness. And in our own case, we ourselves will strongly attack the first beginnings of excessive fear, and will neglect nothing in order that we may rather make little

of present evils, lay aside every "egoism," or excessive solicitude for one's own body and one's own advantage, and acquire for ourselves strength of mind. Cf. the things usefully written by several authors concerning the formation of the will.

This must be held as a principle: It is placed in our hand whether we undergo or shake off the yoke of physical evil. If we undergo it, we shall be unhappy and often morally impotent; if we shake it off, we shall be morally free and shall preserve happiness intact.

In a religious matter also, if certain terrors, yet to be inspired by true arguments and not others, can be useful in act, habitual terror is harmful. Indeed we are commanded to fear God, but with filial fear which is combined with the spirit of adoption of sons, in which we cry "Abba," Father (Rom. 8, 15).

§ 5. On Deceit

I. Notion. Deceit is not any lie whatsoever, but denotes lying arts employed for deceiving another. Deceit per se begets error; hence its efficacy upon the voluntary is to be estimated. It happens, however, that beyond the connatural force of error an act is made weaker by positive law.

In penal law deceit is the deliberate will of violating the law (c. 2200); and also in the civil forum harms inflicted by the will of harming are judged to have proceeded from deceit; this deceit is thus distinguished from simply blameworthy negligence.

The Code of Canon Law, c. 103, § 2, establishes concerning deceit the same thing as concerning grave fear unjustly inflicted: acts done from deceit are valid unless something else is provided by law, but they give place to an action for rescission. Yet they are invalidly admitted to the novitiate who, induced by deceit, enter religion, or whom the Superior, induced in the same manner, receives (c. 542, 1°); for the validity of any religious profession it is required that it be emitted without deceit (c. 572, § 1); the renunciation of an office or benefice, made by deceit, is void by the law itself (c. 185).

[1] For instance, blasphemy (v. 2323).

[2] If, in order to mock the faith, someone is commanded to dine, drink wine, and then celebrate Mass.

[3] If a priest is commanded to violate an interdict in order to empty out the authority of the bishop.

[4] In certain circumstances it will not be licit to flee persecution, if the flock would thereby lose courage.

Summary

I. Man's free choice is finite; and even within its own limits it is suppressed or diminished by impediments.

For healthy men, of whom we speak first, there are common impediments and accidental impediments.

II. On account of common impediments, the following lack liberty: a child, one sleeping, one perfectly drunk. A semi-wakeful person uses diminished liberty, which makes glorious the victory of one then overcoming temptation, but is not sufficient for sinning mortally.

III. As to the ends within which free choice is enclosed: the motions of lower concupiscence, and also motions of the will itself which are called first-first motions, anticipate deliberation. Second-first motions give place only to imperfect deliberation.

IV. Accidental impediments. 1. Ignorance,. or the privation of knowledge, differs from simple nescience and from actual forgetfulness or inadvertence.

a) In the subject, ignorance is distinguished as invincible and vincible, according as it could not or could be driven away by at least moral diligence. Vincible ignorance is attributed either to negligence, which can be crass, supine, or simple, according as an easy occasion of knowing, or merely sufficient diligence, has been omitted; or to the direct will: then it is called affected. The existence or sense of a law can be unknown: ignorance of law; or the condition of application: ignorance of fact.

It can antecede or follow an act of the will; be a cause, removing what prohibits, or have no causality. Antecedent ignorance is called that which is at once involuntary and a cause of willing; concomitant, that which is not a cause of willing; consequent, that which is at once vincible and a cause of willing.

b) Positive laws can be invincibly unknown, and also conclusions not so remote from the natural law, if you except a few too near to the first principle: good is to be done, evil is to be avoided.

The habit itself can produce inadvertence; nevertheless it is not presumed to do this.

c) The gravity of vincible ignorance is estimated from the conscious degree of negligence or of evil will. He who carries culpable habitual ignorance sins as often as he wills to be ignorant and as often as he exposes himself to the danger of harmful error. But the sin is opposed either to a special precept of knowing, or takes its species from the transgressions which are foreseen to follow.

d) Antecedent ignorance makes involuntary; concomitant ignorance makes non-voluntary; consequent ignorance makes voluntary in the cause, but not in itself. Affected ignorance is a sign of a great propensity to the thing for the sake of which someone wills to be ignorant; yet it diminishes or increases the voluntary according to the motive by which the will of being ignorant is determined. Note that affected ignorance can also be praiseworthy, like the reason of every ignorance. In general, ignorance at least diminishes the voluntary.

e) What it effects in the voluntary it effects also in merit or demerit.

f) Canonical penalties, though for the most part not likewise civil penalties, are diminished or even taken away on account of ignorance of law. Affected ignorance excuses from no penalty; all non-affected ignorance excuses if the law has the words "shall have presumed," etc., or similar words; simple ignorance, but not crass ignorance, excuses from medicinal penalties *latae sententiae*.

g) Insofar as voluntariness is required for validity, for the same reason ignorance will be able to obstruct the validity of an act.

h) What has been said about habitual ignorance holds also concerning inadvertence.

2. Concupiscence,. or the motion of the sensible appetite, is at once and per se a help to us; but per accidens it is an impediment.

a) It is antecedent or consequent, according as it precedes or follows an act of the will. Consequent concupiscence can be so by mere resultance or by direct excitation. An affection thus excited is by no means fictitious.

b) Concupiscence can take away deliberation. Per se, however, it allows liberty to be intact; but an act conformable to it is less voluntary and free if the concupiscence was antecedent. Consequent

concupiscence by resultance is a sign of an intense will; by direct will, however, it increases the voluntary. By the same reason it diminishes or increases merit or sin. Yet by consenting to resultant concupiscence, then we increase merit or sin.

A good act contrary to concupiscence will be of itself more voluntary and meritorious; but it is not an effect of concupiscence itself.

c) By custom there are produced forgetfulnesses and also propensities which can create a moral impossibility to be healed gradually.

d) On account of present infirmity, we need medicinal grace for overcoming grave temptations.

e) Passive tolerance of a sensible motion, but not likewise of an indeliberate motion of the will, cannot in itself be a grave sin. Nevertheless there remains the obligation of avoiding the proximate occasion which the tolerated concupiscence itself can bring on. Resistance to temptations is sometimes to be counseled as positive, sometimes as negative. Let it always be commended as quiet, not anxious.

3. Coercion. is a motion whose principle is outside, while he who suffers resists to the contrary.

a) The will cannot be coerced; the sensible faculties and exterior acts can be coerced.

b) Absolute force is distinguished, which effects the involuntary; and force according to something, which by greater resistance can in some measure be overcome.

c) The omission of resistance can be blameworthy or praiseworthy. Absolutely to be denied is every participation in an intrinsically evil action, unless, when the question is of exterior goods, the malice itself of the participation could cease because of the primary destination of goods. One can abstain from useless resistance, provided scandal and danger of consent be avoided.

4. a) Fear, or a trepidation of mind arising from the apprehension of danger, can take away every voluntary element by disturbing reason. But if reason is not disturbed, it is distinguished as grave or light, and this absolutely, or relatively to the person who fears. Reverential fear is per se light, but easily, on account of circumstances, is converted into grave fear.

b) Fear per se leaves sufficient place for deliberation, so that the act is voluntary and juridically valid. Yet fear which has been absolutely or relatively grave, if it has been inflicted by a free cause - which fear is called fear from without - provides the law with a reason why several acts are rendered null or rescindable. Cf. cc. 185, 642, 572, § 1; 1087, § 1; 1307, § 3.

Considered in itself, however, an act done from fear is simply voluntary and for the most part, but not always, involuntary according to something. Fear also can, as an impulsive cause, operate beyond its own power, if powers for a nobler act are at hand, as when an act of charity is commanded by fear.

c) An evil act placed from fear diminishes sin, yet not so that from mortal it becomes venial. It also diminishes canonical imputation; indeed, when there is question of merely ecclesiastical laws, for the most part it takes away the delict.

d) Phobias are to be healed diligently; but better are they to be prevented by wise education.

5. a) Deceit, or lying arts employed for deceiving another, impede the voluntary, insofar as they beget error. By positive canonical law deceit is assimilated to fear and invalidates, by the law itself, religious

profession and renunciation of office or benefice.

b) In penal law, deceit is the deliberate will of violating the law; in the civil forum, when there is question of repairing harms, deceit is called the will of harming, and is distinguished, as a cause of harms, from negligence.

Chapter II: Impediments of Free Choice in the Sick Man

Order of treatment. For our end and according to the plan of the present work, it will suffice that, after a general notion has been set down, we touch very briefly upon the individual diseases and their force upon free choice.

There will be two articles of this chapter. In the former we shall hand down various notions; in the latter, we shall weigh troublesome cases which occur in matters of lust.

Article I: On Various Diseases of the Mind: Brief Notions

I. What diseases of the mind are. In this place we treat of those infirmities which permanently or transitorily take away or diminish free choice, and which are called diseases of the mind, not because the mind itself, or the spiritual faculties, can be diseased in themselves, but because, on account of the badly affected centers of the brain and the sensitive powers, especially the phantasy, which they use, they are subjectively impeded in their action. Indeed, apart from its depraved habits, which do not take away liberty, the will is not impeded otherwise than by the intellect being impeded. "Insofar as reason remains free and not subject to passion, so far the motion of the will which remains does not tend of necessity to that to which passion inclines." Thus St. Thomas already wrote accurately, 1, 2, q. 10, art. 1.

II. Division. These diseases are called organic when some lesion is found in the material organ; but functional, those which allow the body to be truly or apparently intact.

They can be reduced to a twofold generic form, since some seem to affect the higher faculties more directly, others rather indirectly, insofar as you would say that by the impulse of the lower powers the higher faculties are imperiously drawn. But they are not drawn except because, by a subjective impediment, the higher faculties have been made weaker, so that they now cannot restrain the lower powers. Wherefore these various diseases are finally of one kind. Let us hand down these few things about most of them.

Phrenetics set forth false judgments which are radically incurable, because they are deceived by perpetual or temporary hallucinations, or at least they have disturbed phantastic associations, so that their psychic life can be equated with the life of those dreaming. In the delirium itself, even if it seems circumscribed by one subject (monomania), they are not free. During the intervals of deliriums, nothing per se impairs liberty.

The demented labor under a certain often increasing imbecility and dullness of mind. Whether they are "idiots," or whether their powers have been exhausted by old age or infirmity, they labor under a more perpetual privation of free choice.

Obsession so occupies the mind that the obsessed person is constrained to think or to do certain things. And it disturbs practical judgment enough that it allows place only for light fault. But besides perpetual obsessions, others arise only in certain circumstances. Wherefore, outside the state of obsession, the sick can freely violate the precept concerning the fleeing of occasions of morbid excitation for committing indecent things.

When there is question of an object toward which there is no natural inclination, the sick person, by repeated acts demanded by the obsession itself, can as it were tire it out, exhaust it, so that morbid anxiety is removed and thus the agent is freed from obsession. But at the same time, through repeated acts, the propensity is increased if any such propensity arises per se from the object. Wherefore this method cannot be applied in a sexual matter, as the physicians Pitres and Regis themselves warn [1].

[1] *Les Obsessions et les Impulsions*. Paris, 1902.

To this are referred impulses which are called invincible; and such impulses can exist in a morbid state, whether they obtain an immediate and non-deliberate act, or whether the act is elicited after fruitless resistance. They suppose a person especially capable of passive induction, or "suggestible." This excessive docility depends upon the abnormal intensity ("developpement") of some phantasm: if that phantasm is of an action to be done, or of a motion, it will easily beget an insuperable impulse.

The praised physicians Pitres and Regis distinguish: a motor impulse, merely mechanical, which is often without affection, as for example in an idiot; a psycho-motor impulse, which is accompanied by a more distinct perception of the thing and a stronger commotion of the appetite; a psychic impulse: then the act does not always or necessarily occur; it is in the power of the agent to resist the impulse.

And so it is not easily discerned whether impulses were irresistible or not. They are to be judged such when the action cannot be explained by natural concupiscence. An invincible impulse also seems to be present if, after the evil action, the mind has remained quiet and content. But the matter is far more uncertain when the propensity is borne toward those things to which healthy men also are inclined.

Aboulia renders the will impotent for willing or for commanding efficaciously: either it remains idle, or, as if unwilling, it is forced to seek or flee certain things contrary to its own practical judgments. One who is affected by the former kind of infirmity is often excused from several positive duties. Concerning the latter, there return the things said about blind or invincible impulses.

Epilepsy, not that which is manifested by the customary phenomena of the comitial disease, but that which is called masked or hidden, impels one to perpetrate various strange, shameful, and atrocious things. It is clear that epileptic or hysterical agitation cannot be combined with grave guilt. But outside the times of frenzies, the mind becomes sane.

In the hypnotic state, insofar as someone is truly acted upon by another's command rather than himself acting, liberty also is taken away. In this state an artificial docility for believing, feeling, and doing those things which another affirms to be or orders to be done is induced in suitable persons.

And this excessive dependence on another often remains. Yet this can be avoided by a suggestion of liberty or independence added in the final command. There is also made a moderate suggestion conformable to the useful desire itself of the sick person, who, by this reason, may wish to be healed of certain less good propensities or to acquire a stronger will [1].

[1] On this argument certain special treatises are usefully consulted, such as those written by R. P. Gemelli, O.M., in Italy, and Prof. Xavier Francotte, in Belgium. Cf. also L. Boone, S.J., *Responsabilite normale et pathologique, Revue des Questions scientifiques*, 1908; *Les questions de responsabilite, Nouvelle Revue theologique*, t. 42 (1910), p. 1 and following.

Neurasthenics can be excused rather easily when they yield to a certain weariness by which, as by an excessive burden, they neglect certain positive precepts, especially if these are merely ecclesiastical. Yet per se they are to be judged to sin if, because of sadness, they seek shameful delights to which the disease itself does not impel them.

N.B. Concerning the scrupulous, below, where conscience is treated.

[1] Since new ways of explanation are being attempted, meanwhile we set forth these things circumspectly.

Article II: On Troublesome Cases Which Occur in Matters of Lust

First case. 1. Certain persons, in whom neither piety nor the study of virtue is lacking, during the day abstain rather easily from every depraved action; but at night, after they have retired to bed, they seem to indulge an evil habit. For they are accustomed not immediately, but after a long delay, to be overcome by sleep; or certainly, after some hours, released from sleep, they experience nocturnal wakefulness. During those parts of the night which they spend sleepless, they are vexed by impure phantasms, they feel nervous excitations, until they have brought on pollution by masturbation. Moreover the frequency of these acts varies, since some defile themselves twice in a month, others almost every night, indeed several times in the same night. If any have not done the evil exterior act, they, from the very omission of the act, are shown to be immune from mortal sin, although they have experienced a completed temptation in which they seem to themselves to have had complacency.

After pollution has been procured, some immediately grieve and do penance, while others remain with tranquil mind.

Some spontaneously confess themselves guilty; others, on the contrary, think that, although awake, they can scarcely use their disturbed mind, and are placed in an unusual condition. Yet they are not relieved from fear of sin, and they readily protest that they doubt about the matter and do not wish to resolve it. Depraved practices of adolescence are for the most part to be blamed as the cause. Yet it also happens that, after an innocent youth, this vice takes its beginning from adult age.

Concerning the just estimation of the cause and concerning a prudent manner of acting, what shall we say?

a) First, the confessor must inquire whether they truly perpetrated these things while awake, or while half-asleep and in an almost somnambulant condition. If some hallucination or deception is discerned; if some absurd error (for example, that now they can indulge these things without sin) or strange reasons demonstrate imperfect wakefulness, these persons are to be judged without ambiguity to be immune from grave guilt. And, in doubt, those to whom the presumption is favorable are rather to be excused.

But for those who, being awakened, practice such things, certain points favor them and certain points are contrary. In their favor are the pure character of their daily life, the best habit of the will, and that inefficacy, as you might call it, of prayer, if before lying down and in the temptation itself they have poured forth prayers. Yet contrary considerations are the state of wakefulness and the struggle itself from which they departed conquered. For there is question of persons who are even healthy. Is not the daily purity itself partly explained because, on account of nocturnal satisfaction, the appetite has been made more remiss? Then in bed heat and a more convenient position stimulate the flesh; but phantasy, released from daily cares, lies more open to temptations. Moreover a good will, prayers

poured forth for a long time without manifest utility, are observed also among those who are accustomed to sin during the day, among whom even not a few will say that while they are pressed by temptation they are affected in various ways, and that an entirely external sin, indeed one perpetrated with an accomplice, does not seem mortal to them. For there is in us a lesser aversion from a disorder which is admitted without injury to another; and in the heat of concupiscence the body and disposition are affected in a peculiar way and are almost changed. And since in all there is per se a great propensity to such acts, we cannot here appeal to the ineluctable force of a perverse instinct.

For this reason, this will be our conclusion. Such persons in general and per se cannot be excused: what a wakeful man has done, he must be presumed to have done while master of himself. Nevertheless signs of lesser fault can be had: a disposition which from other sources appears badly tempered or hysterical; the speed with which the action followed the thought; great disturbance of mind from the beginning, which allows only a slight space or opportunity for deliberating; great temptations during the day, which have been strenuously overcome.

It will also help to question them as to with what conscience they acted, with what moral reflection, with what persuasion of free choice. I mean a persuasion that is spontaneous and, as it were, immediate, not one obtained by a longer reasoning or by another's counsel. For guilt will be absent from him whom conscience of its own accord has absolved.

The supply of a certain judgment will not so rarely be lacking. But since the morality of the act done depends entirely on subjective consent, and therefore is not affected by our opinion, there is here no place for probabilism; and by a similar obligation we must flee the proximate occasion of certain and doubtful consent.

A prudent manner of acting. The confessor must diligently take care that these persons be protected at the same time from excessive security and from dejection of mind: he who thinks himself empty of fault and he who loses heart both cease to strive against the habit. Wherefore the confessor should neither be severe in absolving relapsers of this kind, since the difficulty of resistance and their general good will render them at least worthy to be treated with great kindness and mercy, and to be strengthened with much patience in a vigorous struggle; nor will he induce them to judge themselves innocent. For that persuasion often lacks a sufficient argument, while confidence is accustomed to increase the force of concupiscence and to impel toward more and more rash acts. The confessor will not call them away from frequent, indeed daily, Communion, or from the celebration of sacred things; yet regularly he will not permit them to perform sacred things or be refreshed by the Eucharistic banquet without sacramental confession. For besides the power of sacramental grace, frequent detestation of the thing and renewal of purpose are among the best means of amendment; and the very inconvenience of approaching a confessor can call the mind away from spontaneous propensity. Yet what remains of doubt in judging the guilt itself allows you more easily to think that there is present a lack of a confessor which excuses access to holy Communion, with only an act of contrition set before it. But it is evident that those are to be gravely corrected who during the day, by reading lascivious things, shameful conversations, and morose delectation, as it were prepare evening excitations. Nor does it now cause a light detriment if, by reading, imagining, or thinking again, especially in the evening, soft and tender affections are fostered, although they are not strictly shameful. Therefore the confessor should strive both to find these things out and to cut them away. It will be very useful, besides, that these persons exercise the will in every way toward strength and

greatness of mind. Often, especially in the evening, let them join an express and serious purpose with prayer; let them procure for themselves the firm execution of any purpose; and let them not remain long hesitant in deliberating. Let them read writers and frequent companions who are firm in mind. Let them season daily acts with a certain salt of mortification, so that thus the body may be exercised toward obedience, and the will toward command. Nor are physical means to be neglected: abstinence from food and drink in which there is an excitatory force; the use of a harder bed; a certain tempered fatigue of the body; mental occupation (yet in the evening after supper, they are to be dissuaded from intense labor, as also from every excessive weariness or anxiety of mind); indeed certain medicines (*lupulin*, bromides, hydrotherapy, suggestion). Wherefore, if it can be done, it will be very useful that an upright and skilled physician together with the confessor contribute his work to the treatment.

More easily, as is evident, there is to be excused a certain nervous motion (say, a tighter joining of the legs, rigidity of the body), which, in the midst of excitation, can be explained by the nerves themselves or by a brief distraction of mind, than exterior acts which require either walking or handling with the hands: as if they strive to embrace solid bodies, or have committed masturbation properly so called.

Another case. There are some who, after intervals, for a long time are driven as if by physical necessity toward venereal pleasure. You would say that they as it were need this satisfaction. They are pressed by a continual invitation until, after a struggle, sometimes prolonged through several days, by a sinful act they are restored to peace and quiet.

This kind of men is often affected by a nervous and hysterical disease. Nor rarely do women experience such things at that age at which they are accustomed to become sterile (*menopause*).

Yet not all are placed in a morbid state. But all are worthy of the greatest mercy. And indeed it can happen that, after a long struggle, they have been made almost impotent in mind, and, raving for an hour, have completed the evil thing. But, this case excluded, or per se, they do not seem to be deprived of free choice. Therefore let the confessor be kind and courteous; let him command them to be of good courage; let him take care that they apply moral and physical medicines, and let him not deny frequent absolution.

N.B. Those who experience propensities of this kind are to be dissuaded from entering religion, and especially from seeking the priestly state. Indeed, where fault seems certain and sufficiently frequent, they are per se positively to be forbidden to undertake the priesthood, since they do not have a sufficiently proximate aptitude for fulfilling the duties of due chastity.

General observation. There are several cases which a prudent confessor will have to commit to the divine judgment, while at the same time taking care that he add strength to souls and obtain from all the greatest resistance which can be hoped for. With physicians, indeed, he will admit fault diminished by depraved habits, by propensities and diseases of mind, yet not so that he rashly pronounces all the sick immune from grave guilt. And this, at least to healthy persons, he will strongly inculcate: that there is no habit which cannot be overcome by a constant will. Cf. on the same argument Noldin, *Principia*, n. 61, 62 and the authorities alleged by him.

Distinction of each forum. In this matter one must also observe what difference there is between the civil penal forum and the forum of conscience. Belgian laws, for example, among the conditions of a delict require that it be committed by a man who is of sound mind. Wherefore, since no one is of

sound mind who labors under a definite psychological disease, all who are affected by a habitual disease are accustomed to be excused from every delict. Let there be, for example, a man affected by a delirium of persecution (*delire de la persecution*): in the penal forum he will go away immune, even if he has committed a delict in a way which has nothing in common with his own subjective error. Although recently dispute has begun concerning another way by which society may effectively be protected from harmful men whom it refuses to condemn.

Summary

I. Psychological liberty is taken away or diminished by various diseases, which are called diseases of the mind because, on account of badly affected centers of the brain or sensitive powers, the higher faculties are impeded in their action.

Organic diseases are found in a material lesion of the organ, while no lesion appears which betrays functional diseases.

The kinds of diseases are apparently two, since some are manifested by direct weakness of the higher powers, others by the impulse of the lower. But the impulse itself is so great because it is not restrained by the weakened higher faculties; so that in reality there is one kind of diseases.

II. Phrenetics are deceived by hallucinations. Wherefore in every delirium, even if it seems partial (monomania), they lack all liberty. The demented, by incurable imbecility and dullness of mind, are deprived of the use of free choice. The command of obsessions and impulses can be invincible. Yet impulses which conspire with natural concupiscence are not easily to be pronounced invincible; and occasions sometimes can and must be avoided freely. Aboulia can excuse from fulfilling certain positive duties. Nor is liberty combined with epileptic agitation, even masked agitation; nor with the true hypnotic state (concerning which new investigations are being made). Neurasthenics also can rather easily be excused when because of weariness they neglect certain duties.

III. There occur also troublesome cases of persons who, being generally affected toward the good, either perpetrate indecent things at night or, after certain intervals, feel a prolonged impulse toward venereal satisfaction until they have yielded to it. The confessor must act prudently, so that the sick may fall into worse things neither by despair nor by false security. Let him strive to obtain the greatest resistance possible. But he will have to commit many things to the divine judgment.

Moral excuse on account of morbid difficulties is often only partial, while in the external forum the same excuses not rarely liberate the badly affected completely from penalties.

Title IV: On the Human Act as Moral

The usefulness of this title, since it concerns the knowing of a thing which is so much ours that from it our discipline draws its name, does not need to be demonstrated. The considerations to be made are truly essential.

Distribution of the title into parts. We must treat successively three matters of great moment: 1. An accurate notion of morality must be handed down. 2. How widely morality extends must be investigated. 3. The sources of morality, with the proper force of each, must be indicated.

Chapter I: What Morality Is and of How Many Kinds

I. Force of the word, with attention to the agent. Morality immediately designates that property of an act freely done according to the norm of human "activity," by which it is apt to begin or confirm a habit of acting which is worthy of man or fitting to him. For a customary manner of acting freely is properly called by the name of *mos*. And although depraved acts also can induce a habit, nevertheless that *mos* can be called accidental, because it is unnatural and violent, almost as in the logical order the subjective certainty of an erring intellect is called accidental and precarious. Moreover, what is first called moral and what is the essence of morality are not agreed upon among doctors.

The norm set before human action is known by reason; whence under another respect an action is called moral which is done according to the order of reason. But we take the norm as it exists for man as he now is, elevated and redeemed, that is, as the subject of moral theology.

II. Of how many kinds morality is. 1. Although an action can be morally good and morally evil, properly the good action alone is a moral action. Nor is a twofold genus of morality to be admitted, since evil morality, as such, is distinguished by privation from good morality. Common usage agrees, which calls an evil act immoral, and a badly conducted man immoral.

2. Morality formally is subjective, or is in acts; denominatively it is predicated of objects. Hence, in a related but not the same signification, objective or material morality is that which affects the object, taken in the broad sense, in itself, without considering the persuasion of the agent; but subjective morality is that which arises from the persuasion of the agent. Thus voluntary abortion is of objectively evil morality, yet subjectively good in many who in good faith judged it as honorable or even commanded in certain circumstances.
3. Intrinsic morality is present in an act from its own genus or from its own nature; extrinsic morality accedes from elsewhere, for instance from the precept of a Superior.

Summary

Properly, a human act is not moral unless it is worthy of man and consonant with the order of reason. Yet a twofold morality is distinguished: good and evil; but from evil morality an act is called immoral. Morality is formally subjective; denominatively, however, there is also objective morality, which is intrinsic or essential; and extrinsic morality, which can flow from elsewhere and from outside nature.

Chapter II: How Widely Morality Extends

No human act is morally indifferent. Although, as to the genus of the work, several acts contain nothing which pertains to the order of reason and therefore are indifferent, nevertheless no deliberate act in the individual, or as it is placed, can be morally indifferent. For it proceeds from reason either ordinately or inordinately: if ordinately, it will be morally good; if inordinately, it will be evil. Cf. St. Thomas, 1, 2, q. 19, art. 9. But if there has been no attention to the moral order, the act will not be moral; but, in our opinion, then neither will it be human or free.

Whether there are good acts which are supernaturally indifferent will be said below, where merit is treated.

1. An external act, just as denominatively it is human and free, so denominatively it is moral. And it is such from the will by which it is done and sustained. But does the external act add anything to the morality of the interior act of the will from which it depends, or which is terminated at it? This is disputed not lightly between Scotists and Thomists; but it seems to us that it must be solved in this way. Because the external act is not moral except from the will by which it is informed, in itself, as external, it has nothing whence it formally contributes anything to morality [1]. Yet it supplies matter to be informed by the act of the will; and, in order that the external act itself follow, there is need of a persevering and therefore more intense act of the will. Whence, on account of the external act, there is had a morality more extended and intense. Wherefore the external act materially and specifically adds to the morality of the interior act.
2. And if you ask whether an action efficaciously proposed but impeded and an action completed in execution are of the same value in the same moral subject, this, strictly speaking, must be denied. For the will itself, while it executes the purpose, endures, is repeated, and is perfected in various commands. At the end of the act it is other than it was at the beginning. Wherefore the external act adds to the interior act of purpose the morality which it possesses from the will; nor can we fully approve what Noldin has, *Princ.*, n. 78, 79, insofar as he seems there to equate the act completed by external action and the internal act, if the omission is involuntary. Indeed nothing is taken away from the act internally commanding; but there is lacking the external act informing the interior act.

Thus man is from the soul; yet the separated soul is one thing, man another.

It is indeed true that, into the action which is done, merit is derived from intention; but intention strictly does not supply for the action which is not done [2]. Besides, often the acceding merit of good example is proper to the exterior act.

Thus far concerning acts which can be included in the power of one purpose. But one purpose, one will, does not avail for many things. Thus by an efficacious desire of leading the life of a missionary or religious, a long series of difficult actions and sacrifices certainly cannot be commanded: this would be angelic power, not human. Therefore let us not judge that the merits of such a life belong to us

from the fact that we were truly prepared to embrace it; but let us highly value the very faculty of carrying out the good things which we proposed, as a new divine grace.

3. Much less shall we equate with acts ineffectual desires, such as are often exhibited in formulas of oblations and consecrations: I would wish to repair scandals everywhere, to be present at all Masses. In these protestations there is present the value of a good affection, which will have to be estimated according to its varied intensity. Say the same concerning several pious but arbitrary agreements which are sometimes commended: as often as I shall have touched my breast, I intend to express an affection of love. That intention operates nothing in touches which cannot virtually be referred to it.

4. Finally, a pious will can in no way supply the efficacy *ex opere operato* which belongs to the sacraments and also in some way to martyrdom.

[1] Cf. St. Thomas, in 1, 2, *Sent.*, d. 40, q. 1, art. 3.

[2] It could be said: intention defines the action which is done; but it does not supply the action which is not done.

An act which, with attention to the disposition of the will, would be done, but has not been done, confers no morality, whether good or evil, upon the subject. We are to be judged from a present will, not from an interpretative will.

Summary

The internal act is moral, and also the external act. The latter formally contributes no morality; materially, however, it produces morality more extended and intense. Wherefore by an intention, even an efficacious one, much less by an inefficacious intention and by formulas of oblations, an external action or effect *ex opere operato* can be supplied.

But an act which would be done confers no morality.

Chapter III: Whence Morality Is Estimated, or On the Sources of Morality

Principle. Since by willing good or evil, and not otherwise, the will itself becomes good or evil, this also holds in the moral order: Acts are specified by the object. Therefore one source of morality can be spoken of, or that whence the moral quality of an act is discerned. But then object is taken in its full signification: it is whatever is proposed by the intellect to the will, or is set before it to be embraced or fled. In this signification it includes the end, the object taken more strictly, and the circumstances with which the object or act is clothed. And three sources of morality are customarily distinguished, about which we must now speak individually.

Nothing terminates the will more than the end, or the good on account of which the will acts. Wherefore the end is the principal source of morality. Yet because the object, even if it is chosen as a means, confers an immediate morality from which one cannot prescind - so that, if it is evil, it impedes the very morality which the action would borrow from a good end - and because in the object there is per se the notion of an intrinsic end, therefore, with St. Thomas, we shall speak first of the object, then of the end, then of the circumstances.

§ 1. On the Object Taken More Strictly

I. Notion. The object taken precisely is said to be that which is presented to the will as the matter, so to speak, of its action. It is considered by us not ontologically, or according to its physical being, but morally, or according as it is attained by the will with advertence to the norm of honesty. Thus it becomes moral; thus it introduces morality into the act. Cf. Sertillanges, O. Pr., *La philosophie morale de S. Thomas*, c. 3, n. 1.

An object is called good which is consonant with the rule of honesty; but evil, which disagrees with the same rule; indifferent, which stands in neither way.

Goodness or malice is intrinsic, which arises from the very nature of the thing and the exigency of order; extrinsic, which positive law confers. The order to which an action is repugnant from the very nature of the thing can be subject to the divine power, if there is a higher order to which a derogation from the prior order can be useful; or the same order is absolutely indispensable: in which case the malice is denominated more strictly intrinsic. The reason for the distinction is to be drawn from the dominion which God exercises over created things. Thus it is not repugnant to divine sanctity that God, in some case, permit or command fornication, by referring it to a higher order [1]; but it is repugnant that He should ever give license for blaspheming or lying.

[1] St. Thomas, 2, 2, q. 154, art. 2, ad 4.

Efficacy of the object upon the morality of the act. Because acts are immediately on account of the object, this also holds concerning the object strictly so called: Acts are specified by the object; and the object is said to attribute the first and essential morality to an act. Yet this is to be understood in such a way: a) that the object be taken not materially, but formally, with that relation of its own to the order of reason or to the rule of honesty which is apprehended and adverted to; b) that the object as such be loved. For if it is not loved, that is, if the intrinsic finality is neglected, the evil morality of

the object indeed will not be declined; but the good morality will not be participated, because good is from an integral cause.

§ 2. On the End

Notion and divisions. First the end is presented to the will; for it is that on account of which something is done. But to have the reason for acting is proper to a rational being. Wherefore the end is called first in intention; nothing is more voluntary, and therefore nothing is more moral.

The end is distinguished as the end of the work, or internal, intrinsic, toward which the work per se, or by its own nature in moral estimation, tends; as for example the relief of need is the internal end of almsgiving; and the end of the worker, or external, extrinsic, which the one acting sets before himself, whether the same or diverse, as if he offers alms as suffrage for the souls in purgatory.

The proximate end is that which is intended immediately, or with no other mediating; the remote end, that which is intended through another end as mediating. A workman lives more sparingly so that, with money saved, he may gradually have the means of acquiring a house: the saving of money is his proximate end; the procuring of the house is his remote end.

An intermediate end is that which, whether proximate or remote, nevertheless is intended on account of a further end. Thus, in the example given, if the workman wants that house in order that he may marry honorably, the saving of money and the purchase of the house are intermediate ends.

The ultimate end, on the contrary, is that which is not referred to another; the simply ultimate end is that which, neither in the same nor in another series of actions, is ordered to another end; the ultimate end according to something is that which concludes some series, yet keeps the notion of a means for another end. Thus knowledge terminates many studies: if it is sought for its own sake, it is called the simply ultimate end; if it is sought for annexed rewards or honors, it will be the ultimate end according to something. Finally, the positively ultimate end excludes a further end; the negatively ultimate end indeed is not referred to a further end, yet does not exclude one. Thus in a just man, the good sought by venial sin is the simply but negatively ultimate end of that disordered act. Satisfaction mortally evil is the simply and positively ultimate end of the sinner.

A total end moves by itself to acting; a partial end concurs together with another: whether both ends move equally and are called equally principal; or one is primary, which has the first part and alone suffices for the act, and the other secondary, which dependently upon the first moves to the action, so that this may be done more easily, more promptly, more perfectly: this is called impelling or the impulsive cause. Thus for a pious priest the stipend will be only a secondary end of celebration; for a less pious, yet honorable priest, who would not celebrate without the stipend, it becomes the primary end, yet not the only end, since both priests wish at the same time to exercise an act of religion.

The end itself can be of the honorable good, or good; or of the pleasurable good: either of delight joined with an evil operation, and then it is evil; or of delight joined with a good operation, and then it is good, if at the same time the operation as honorable is intended. But if explicitly nothing is thought of except delight, then it is disputed whether this end should be called indifferent or evil. Omitting the dispute here, this is our brief conclusion.

On an action done on account of delight. 1. Delight is described as enjoyment of the appetite from a possessed good; and especially sensible enjoyment, while the delight which follows reason is rather addressed by the name of joy.

2. For the solution of the question it must be noted beforehand that a twofold good will is to be admitted in man: the will of not transgressing the order of reason or the law of God, and the will positively zealous for that order or law. This will is better; nevertheless the former is already good, because it loves the object as such a thing to which reason or God does not contradict, or because it contains a voluntary repudiation of moral evil. But voluntary omission is equated with an act; and the voluntary omission of evil is as it were an act containing approval of the moral order.
3. Now indeed, reason detects this disposition of divine Providence by which He has joined delights with useful operations so that men may be enticed to them. Hence it perceives that it is not against the order of reason to yield to that invitation, provided one holds the mode of temperance.

It observes, besides, that it is positively good for man in the present life to be moderately delighted, indeed that this is sometimes necessary so that the mind may be recreated and may be able for nobler pursuits, even of virtues (1).

4. Hence now in a conscious manner a man can act on account of delight in three ways:

a) By loving and seeking delight as a useful and almost necessary aid of virtuous action: then the will is positively zealous for honesty itself; it does not act merely on account of delight; and by all it is called good or honorable.

b) By seeking and embracing the delight which he first apprehended as licit, simply as a delight not evil. Then he rests in delight as in an end negatively ultimate, not indeed of the subject, but of such an action. Then he acts on account of delight alone, insofar as delight alone moves him; yet it does not move him as pure delight but as delight not evil, or to which reason or God does not contradict. And this will is positively good, insofar as it contains repudiation of an evil object and of intemperance, or excess in the mode.

c) By resting in delight as in an end simply and positively ultimate, with virtual contempt of the divine order: "whether it is forbidden or not, I want this delight." This manner of acting on account of delight alone is the only sinful one.

d) If, in acting, there is no attention to the agreement of delight with the order of reason, then indeed the intrinsic end will be able to be called indifferent; but rather it must be said that the action, from this part, is not human and free.

This reasoning cannot be opposed to our conclusion: that God made delight for the sake of operation, and therefore delight is to be sought by us for the sake of operation. For nothing obliges us to act with the same intention as the legislator: the end of the law does not fall under the law.

In vain also would the two propositions condemned by Innocent XI, n. 8 and 9, be alleged: "To eat and drink even to satiety for pleasure alone is not a sin, provided it does not injure health, because

one can licitly enjoy the natural appetite in its acts." "The work of marriage exercised for pleasure alone is entirely without fault and venial defect." In vain, I say, would they be alleged, both because those propositions were condemned as they lie "at least as scandalous and pernicious in practice," and judgments so put forward, by which pursuits needing restraint lest we exceed due measure are fostered, are importune and in practice must lead to sinning; and because it can be denied that he acts for pleasure alone who embraces pleasure as not evil.

Concerning this argument cf. Ballerini-Palmieri, *Opus theol.*, tom. I, n. 101 and III, n. 323; De la Barre, *La morale d'apres S. Thomas*, p. 53, 54; and Noldin, *Princ.*, n. 88-91.

That in the present life mortification rather than delight is to be preached, we by no means deny. Yet imprudently would every delight sought for its own sake be accused of venial sin. For concerning actions which men are accustomed to perform with a quiet and simple mind, scruples are not to be injected. For a fearful manner of acting, which weakens the mind, is to be avoided by good men.

Efficacy of the end. 1. An action cannot be morally better than its total end. For beyond the intention to which the means are referred it is not loved by the will, does not terminate the affection of the will, and therefore cannot have moral goodness: the will by willing good becomes good. Therefore, if the whole action is done on account of a solely lightly evil end, the whole will be morally evil. Nor does it matter that its object is good, for example the relief of need, since the will does not will that good except as a means to an evil end, and therefore wills nothing except evil.

2. Intermediate ends, as such, add nothing to final goodness. For as such they are loved only as means.

3. Simultaneous and coordinated ends, that is, those of which neither exists or is intended on account of the other, make an action virtually multiple, which participates in the morality of each end. For since we can simultaneously will the observance of the order of reason in one thing, and its violation in another thing, it is not absurd that two actions, as it were parallel, one morally good, the other morally evil, should exist at the same time. Someone wishes to extinguish flames in order to save a child and at the same time in order to steal. The extinguishing of the fire will be morally honorable insofar as it is ordered to the safety of the child; morally evil insofar as it is directed to theft [1]. Nor is the matter morally changed by the fact that each end, equally principal, had to concur in order that the action be done: as if, in the proposed case, neither the desire of theft alone nor the hope of saving the child alone would have persuaded the agent to the action [2].

Take care not to transfer to merit what we have said here about an action reduplicatively as moral. Cf. the things to be said below.

4. Of two ends, of which one is primary and the other secondary, the primary gives the principal morality, the other an accessory morality, or morality according to something. Wherefore a secondary end of the temporal order, for example of gain, does not corrupt an act good from another end.

[1] Cf. the principle enunciated by St. Thomas, 1, 2, q. 18, art. 4, ad 3; and Suarez, *De bonitate et malitia actuum humanorum*, d. 8, r. 1, n. 7, 14, 15, 16.

[2] Cf. Pesch, *De Deo creante*, n. 639-641, and Frins, *De act. hum.*, II, 436 and following.

Corollaries. By comparing these assertions about the end with the rule handed down above about the object, these corollaries become manifest:

1. An act good from the object, commanded toward a good end (for example, almsgiving from a motive of religion), besides the specific goodness of the object, acquires a new goodness from the end.
2. An act evil from the object, directed to an evil end, is stained with a twofold malice: think of theft perpetrated on account of fornication.
3. An act which from the object is evil, directed to a good end, does not thereby become good, as will be said below, n. 123.
4. An act draws its more powerful moral species from the end rather than from the object, because the end is more loved per se and therefore more voluntary. Wherefore alms given on account of the worship of God is more an act of religion than of mercy; theft on account of fornication is to be placed more in the species of lust than of injustice.
5. An act indifferent from the object will become good or evil from the end.

§ 3. On Circumstances

Notions. 1. Circumstances are as it were accidents of human acts; for they are any conditions whatsoever which, while situated outside the substance of the act, touch it in some way.

2. Already seven in number were indicated by Cicero [1], which are contained in this little verse:

Who, what, where, by what aids, why, how, when.

In this verse, *who* designates a special quality of the agent: he is a cleric, a child, married.

What designates a special quality either of the object or of the effect. (There are those who call the circumstance of the object "about what," reserving the circumstance "what" for effects.) The quality of the object will be had, for example, in the love of an enemy; in an injury done to a sacred person, a relative; in theft of such or such a quantity. But the quality of the effect will accede if there has been a special good or evil force of example; if the action has given place to blasphemies.

Where notes a special quality of place, for example, in a church.

By what aids is referred to the means employed, to instrumental causes, to accomplices: I pursued the end by mortifications, lies, frauds; a sacred or married person cooperated.

Why recalls the end: of this we have already treated.

How names the manner of action: for example, cautiously, imprudently, with great intensity.

When asks about the time at which the thing was completed, and also about the space of time through which the action lasted, for example, an office was omitted during a time prefixed for censure or reservation.

Cf. on these circumstances St. Thomas, 1, 2, q. 7, art. 1.

4. According to the varied intention or ordering of reason, the same thing can be an object or a circumstance. Thus one person will commit a sacrilegious theft, another a thievish sacrilege, by the removal of the same chalice. Cf. 1, 2, q. 18, art. 10.

[1] *De inventione*, l. I and II; and *Topica*.

Effect of circumstances. Circumstances:

a) Sometimes increase or diminish goodness or malice within the same species: five thousand or one hundred thousand francs have been taken by theft;

b) Sometimes transfer malice to another theological species, that is, sin from grave becomes light, or conversely: an injury done to the Pontiff or to the King will be grave which would be light if done to an equal;

c) Sometimes add a new moral species, for example, a vow of chastity in the matter of purity;

d) Sometimes give the first moral species: the eating of flesh on a day of abstinence. (A circumstance which adds or constitutes a species is now not properly a circumstance, says St. Thomas, 1, 2, q. 88, art. 5.)

§ 4. Supplements on the Maxim

Title IV: Good from an Integral Cause, Evil from Any Defect

What moral goodness or malice requires. In order that an act be good, it is necessary that its goodness be not only known, but in some way intended, that is, that, at least confusedly, as good, it be voluntary. For goodness toward which we are not formally affected is not ours, remains extrinsic to us, and cannot render the will formally good.

Yet a reflected intention is not required, but a direct or exercised intention suffices, which per se he has who, conscious of the good nature of the action, effects it.

But in order that an act be evil, it suffices that the malice be known, although in itself it displeases. The reason is the negative precept of avoiding evil, which is violated by every voluntary transgression. Moreover malice in itself is not lovable. Whence evil cannot terminate the will except per accidens, or as joined with good.

What the circumstance of the end can do. An act evil from the object cannot become good because of a good end. For by choosing this means of an evil action, the will is not wholly turned away from evil. Although from a good end, as from every good note, sin can be diminished.

On the contrary, an act good from the object can become evil on account of an evil end or evil circumstances. It becomes evil if it is wholly referred to an evil end, or if on account of an evil circumstance the act itself is prohibited: as if a suspended priest gives a sacred sermon.

On the other hand, there are accidental and extrinsic circumstances which, although less good, allow the act to be substantially good: motions of impatience in the service of the sick.

The maxim. Whence there appears that which St. Thomas copies from pseudo-Dionysius: Good is caused from an integral cause, but evil from individual defects. And it is manifest per se, since good and being are convertible, and absolute evil, or that which would be nothing except evil, cannot exist, that evil is spoken of by the partial privation of good. Wherefore evil has origin from individual privations; but once privations are removed, good is obtained, and at the same time integral good. Cf. 1, 2, q. 18, art. 1; and q. 19, art. 6, ad 1.

Intention and the exterior act. Nevertheless intention cannot change the nature of an exterior work as such; and therefore it will not render unjust an action which was done according to right. Wherefore he is not to be charged with injustice who from hatred pronounces a just sentence of condemnation; nor the commander of an army who wills to kill innocents through the explosion of a fortress, otherwise necessary or licit. Cf. Bucceroni, *Institutiones*, I, n. 80.

Summary

I. All morality is taken from the object completely taken, with the end and circumstances. The object taken precisely can be indifferent, good, or evil by intrinsic goodness or malice, that is, from the nature of the thing, and by extrinsic goodness or malice.

More strictly, that malice is called intrinsic which cannot be removed by the will of God. But the object, if it has any morality, contributes the first morality.

II. The end is distinguished as end of the work and end of the worker; proximate, remote; intermediate, ultimate, whether simply or according to something, whether negatively or positively; total, partial, primary, and secondary.

The end can be good or evil, but not indifferent, if the act is human from the end.

III. Hence to act on account of delight which itself is perceived not to be evil is neither evil nor indifferent, but morally good, though less so than if the delight is positively referred to an honorable end.

IV. An action cannot be better than its total end. To formal goodness an intermediate end, merely loved as a means, adds nothing. But the primary end confers the principal morality. From two principal ends the action as it were becomes morally twofold, since it participates in the morality of each.

V. Good or evil circumstances sometimes merely increase or diminish morality; sometimes they transfer the same to another species, whether moral or theological; sometimes they confer the first morality: but then they are rather the object.

VI. Because goodness must be intended in order that the action be good from it, while an action becomes evil by the sole choice of evil, and because an evil end and evil circumstances can corrupt an act but cannot, if it is already evil from the object, render the same good, good is said to be from an integral cause, but evil from any defect. Yet there are accidental circumstances not gravely evil which allow an act to be substantially good.

An evil intention does not change the objective nature of an external act as such.

Title V: On the Human Act as Imputable and Meritorious

Usefulness. Human and moral acts tend to this, that they perfect man. The perfection of man depends upon imputability unto merit. Hence is evident the importance of this inquiry; and it is also clear from this, that there comes before us the explanation of a principle which has perpetual use in moral theology: the principle concerning the permission of evil and concerning the double effect.

Notions and division. Imputation is the attribution of some action, or of some effect, to someone as to its true free author. He who imputes, according to the varied case, praises, blames, rewards, chastises. But in him to whom something is imputed, there is had a title of honor, of glory, of ignominy, a right of obtaining some good, or a necessity, physical or moral, of bearing disagreeable consequences.

Both God and public power, ecclesiastical or civil, demand an account of actions. Hence there is distinguished moral imputation, in the forum of God and in the opinion of men [1], and forensic imputation, or imputation in the human forum, to which the judge attends.

For the present condition of man, besides the general question of moral imputation, a special question is posited concerning supernatural imputation, in order to the merit of divine life.

[1] Why is imputation among men called moral? Because, as God does, so men consult no other norm in their opinion than the objective norm of honesty, by which conscience itself is regulated. In the human forum law and delict are considered.

Article I: On Moral Imputation

One's own action or omission, the effect of one's own action or omission, and the action or omission of another can be imputed.

I. One's own action or omission is imputed according to all notes which are intended; indeed, according to all notes which are known to be in the object, if there is question of evil, provided the will pursues the object as existing. If it is affected toward an abstract thing, the evil act is infected only by the notes by which the object is constituted as lovable or eligible.

II. Concerning the effect.

1. **Notions.** An effect, in moral matter, is the further efficiency or resultance of an action complete in itself, or of an omission, which can be a distinct object of the will.

The action is taken as moral. This is not complete without some intention of the will. Wherefore the end which gives the first morality belongs, not to the effect, but to the object. Cf. Noldin, *Princ.*, n. 77.

According as the thing or cause to be examined requires it, the action is taken more or less precisely, so that what for the most part is said to pertain to the action is sometimes reckoned as an effect. Thus the killing of a man will for the most part be called an action; and yet, where it has been necessary in order to repel an unjust aggressor, it is judged by St. Thomas to be an effect *per accidens* of one's own defense (2, 2, q. 64, art. 6).

An effect *per se* is intended, or in itself also is voluntary; an effect *per accidens* does not terminate the will, but is merely permitted: it follows against the will, or at least without its intention, on account of the concurrence of a cause which the will cannot impede. And the effect which follows an omission is passively or negatively permitted; the effect which follows an action is actively or positively permitted. In the latter case, contrary to the former, the will by its own action positively concurs toward the effect.

Finally, in moral matter, contrary to what Kant thinks [1], who can be called a Jansenist non-Catholic, an effect too remote and a merely possible effect, or one whose foresight is founded on no serious motive, can be neglected. Whether they are imputed or not, if they have been intended, is usually disputed in the treatise on justice.

[1] For example, a servant, at your bidding, denies that you are at home. The one who was seeking you goes away, meets someone on the road, and kills him. This is imputed to you as an effect of your lie! (*Metaphysik der Sitten, Ethische Elementarlehre, Von der Luge, Casuistische Fragen,* end).

2. Rules of imputation.

1. An effect *per se*, or intended, is always imputed according to its nature, whether good or evil.

From what was said above it is evident that an evil action is purified by no good effect, so that it is never licit to act evilly on account of a good effect.

2. A good effect is not imputed unless it was foreseen and intended: good is from an integral cause.
3. An evil effect negatively permitted is imputed insofar as there exists an obligation of positively impeding it. This obligation is weighed in the various treatises of moral theology.
4. An evil effect positively permitted and foreseen is imputed insofar as the action must be abstained from lest that effect follow. And so it can happen that it is not imputed, even though the action which it follows is evil. Thus drunkenness is forbidden by the law of temperance, but not lest pollution follow. Therefore merely foreseen pollution is not imputed to him who intoxicates himself.

Moreover, distinct foresight is not required; it is enough that the agent in some way advert that from such a cause such an effect will exist, or can easily come to exist; or at least that in some way he know the obligation to advert to this. This foresight is judged to have been present if, from the nature of the thing, or with attention to one's own experience, such an effect follows for the most part.

But an evil effect foreseen is always imputed to him who can avoid it without omitting the action. For then there is no excuse for the evil effect.

3. Practical formulas. The principle of double effect. But when an action must be abstained from lest an evil effect follow, this must be estimated from the gravity of the evil effect, from the nature of the precept to which it pertains, and from the cause for acting.

1. Hence the rule customarily posited, which we think should be written in these words. An evil effect which is permitted to follow an action is not imputed if the immediate efficiency is

diverse, and the permission is excused by a proportionately grave reason.

The efficiency can be the action itself, or another effect of it. It is called immediate, not from an interval of time, but from the mode in which it is produced, which is not through or by means of the evil effect. The proportionately grave reason will have to be estimated thus:

a) Let there be considered the distance by which the evil effect is separated from the causality of the action. The nearer and more necessary the effect has been, the graver excuse will be required.

b) Let there be weighed the obligation of avoiding the evil effect from the principles of justice, if another's damage is foreseen as going to follow my causality; from the principles of charity and piety toward myself, if my own harm, for example of life or members, is feared; from the principles of charity toward the neighbor, if he seems about to sin on the occasion of my action; and of fraternal correction, if his sin will be only material. Where there has been no damage of this sort from which one must beware in acting, there is no obligation except sincerely and prudently to avoid intending the evil effect under a feigned color, or directly causing it.

c) Let the obligation just mentioned be compared with the hoped-for good and with the right of pursuing it: if, these things having been weighed, the cause for acting seems reasonable, it will be licit to act, and the evil effect will not be imputed to the agent.

Concerning the obligation itself of avoiding the evil effect, it will be useful besides to have noted these things. We ought to avoid another's damage in a human way: wherefore what is too remote can be neglected; and without too great a detriment to oneself, so that, in an equal cause, the agent can prefer himself. We ought to provide for our temporal life and safety with moderate diligence and ordinary means, not with exquisite ones. A positive obligation of impeding a material sin does not press us with grave inconvenience. But the due solicitude that the neighbor not sin formally varies according as the neighbor can more easily or more difficultly not sin.

Demonstration. Moreover, the rule handed down is shown true by this brief reason: because in the proposed case, the causality of the will, taken in itself, contains the evil effect neither as intended nor as chosen, and satisfaction has been made to the positive precept of taking care that the evil effect not follow. Therefore no cause remains why that effect should be refunded into the will of the agent.

They are accustomed to render the same thing by this other formula when they say: "It is licit to posit a good or indifferent cause, of which there is a double immediate effect, one good and the other evil, if there is present a proportionately grave reason, and the end of the agent is honest."

We call that formula less happy: a) because it seems to require a simply good or indifferent cause, whereas it is enough that it receive morality from another source than from the order to which the evil effect pertains, so that at least under this respect it is good, although under another it can be evil; b) it compares only effects among themselves, whereas the good can be both the action itself and a further effect of it; c) because it requires an end strictly honest, which is too much. The killing of innocents will not be imputed to the leader who, from hatred, orders a hostile fortress to be overturned.

No action effects another's formal sin. But observe that the free action of another, or, in the case, formal sin, can never be the effect of one's own action. But one's own action, if it is scandalous, immediately brings on a temptation, to which another freely yields or resists.

Lemmas. 1. God does nothing *per accidens*, since all things are in His power. Nevertheless He can permit moral evil, because He is the universal provider according to the supreme reason of the relation of things to Himself; and the very permission of evil can yield to His glory, that is, that He may obtain free praise from him who "could transgress and has not transgressed" (Eccli. 31, 10).

2. Take care not to transfer the rule called "of double effect" to the diverse case of an action which can be either this or that: for example, what I see is perhaps a man, perhaps a beast. The voluntary discharge of a gun, directed at that thing, will perhaps be homicide, perhaps useful hunting. Here there is no question of a partial causality by which the evil effect is merely permitted, but by a full causality one or the other is done disjunctively. Therefore homicide is hypothetically accepted and chosen. Wherefore it is not licit to do against a probable man what can never be done against a certain man. Or more universally: "As often as you doubt whether what you will is perhaps something else, each in evil or harmful matters must be said to be willed by you." D'Annibale, I, 155.

Therefore let us very carefully distinguish what is probably licit against a certain man, and what is licit against a probable man.

When he sins who wrongly permits an effect.

When the effect is wrongly permitted, guilt is then contracted when the agent posits its cause, and afterward his guilt of itself is neither increased nor diminished, whether the effect follows or not. Thus he who indulged in play, foreseeing the omission of the precept of Mass, becomes no less guilty because perhaps there arrived a priest who celebrated later. Nevertheless, the player will be bound to hear that Mass, lest he sin twice by omission of Mass: one omission voluntary in another, or indirectly; the other in itself, or directly. It also happens that, because the effect did not follow, the sin is not damaging, or the case is not reserved. Think of the censure laid against those procuring abortion... the effect having followed. (Can. 2350 § 1.)

III. Imputation of another's action. Although the free action or omission of another can never be the effect of one's own action, nevertheless in a certain way it is imputed to us on account of cooperation, on account of the imitation of a good example or scandal, and on account of fraternal correction made or omitted.

But again, another's action, as good, will not be imputed except to him who wished to obtain it, or at least confusedly wished to favor it.

But as evil, it is enough that it have fallen under the foresight of the agent. Yet by the same reason by which we have shown that the active permission of an evil effect can be excused, or by a stronger reason, it is effected that, on account of just causes, both cooperation toward another's evil action, and scandal, and omitted fraternal correction, can be excused.

For cooperation means only a secondary work by which the principal free cause is helped, whereas in the active permission of an evil effect, the action of the one permitting is often joined to causes that are not free, so that it can in some way be called a principal cause. Thus, in the classic example of innocents who by chance are found in the place of an explosion.

The author of scandal, as such, merely offers an occasion for evil: he exercises no true efficiency in the evil.

He who omits fraternal correction merely does not impede the evil.

Yet in itself a greater evil, that is, formal sin, arises on the occasion of scandal or of omitted fraternal correction: but the sin is the neighbor's, not that of him whose action we are estimating.

But what cooperation, what account of scandal, and what omission of fraternal correction are excused remains to be examined in their proper places.

Article II: On the Merit of the Human Action and the Connected Question of Intention

§ 1. On Merit

Notion and general conditions. 1. Merit is the retribution, or quasi-price, of a good work [1]. For after it has been done, a good work is, as good, worthy of fitting retribution, or wages, before him to whom it is useful and acceptable in some way, or to whom it is ordered [2]; and the action in which this title is present is called meritorious.

2. The common conditions of every merit are seen to be these: peace between the agent and the one making retribution, for a work done in the state of offense cannot be acceptable to the offended person [1]; a work freely done; a relation of the work to another's service; proportion between the work and the price; acceptance by him in whose service the work is offered.

Moreover the relation to another's good can either be innate in the work, or connatural, or it must be completed by a certain intention. Thus works by which a servant serves his master, indeed whatever things are nobly done by a son, are naturally referred to the master, to the father who is thereby honored; on the contrary, a literary work is indeed apt of itself to please readers, but it will bring honor or other utility only to those for whose sake the labor has been undertaken, or to whom it is offered to be read; and so a certain dedication or new intention must be added. Yet this intention, which accedes to a work complete in itself, must be carefully distinguished from the intention which constitutes and specifies the act.

[1] 1, 2, q. 114, art. 1; and q. 21, art. 4.

[2] 1, 2, q. 114, art. 2, ad 3.

[1] 1, 2, q. 114, art. 2, ad 3; and q. 21, art. 4.

Division. Merit can be human, before men, or theological, before God. The latter is said broadly of any divine remuneration, even temporal; strictly, of the retribution of eternal life.

Theological merit understood strictly in this way is customarily distinguished into merit *de condigno* and merit *de congruo*. Merit *de condigno* means the title of some justice or equality of proportion between the action and eternal life, insofar as the work truly becomes worthy of eternal life from divine ordination and the quality of the work. But in the dignity of the work, the dignity of the one working is included. Merit *de congruo* means a partial or inadequate title, to which nevertheless retribution is to be connected by some equity. Just as merit *de condigno* itself depends both upon

divine ordination and upon man's free action, so there seems to us to be a twofold root of merit *de congruo*: one, the grace of God inviting, to which it is consonant that what He has begun He bring to its end; the other, the good effort of man: for it is fitting "that to a man working according to his own virtue God should recompense according to the excellence of His own virtue" [1]. Merit *de condigno* infallibly brings an increase of sanctifying grace or glory; merit *de congruo* gives actual aids, but is not infallibly joined with sanctifying grace, because man does not necessarily furnish the required cooperation. But for both kinds of merit the state of a wayfarer is required, since both immediately or mediately regard the retribution of eternal life.

Natural merit would befit the works of a man not elevated; supernatural merit is the merit of the present order; it befits the works which elevated man effects from grace.

[1] 1, 2, q. 114, art. 3.

Note concerning theological merit. From elsewhere we already know that nothing can be offered to God by a rational creature except external glory, which God wills as wise and holy, but does not seek as needy. Besides, these things must be well noted concerning the reward of eternal life. The reward of eternal life cannot be compared with those extrinsic and accidental rewards which men are accustomed to confer. But it must be called essential, insofar as man himself as a whole is ordered to it; insofar as, under the respect of beatitude, he is called by the intimate inclination of the will; insofar as it is loved and sought by every moral action. And it is intrinsic, insofar as it is the complement or perfection of man, such as he now is. Wherefore he who wills to act well is understood in reality to intend this, as he wills the harvest who sows it.

Nor is the reward only future: already now it is conferred on us inchoatively in sanctifying grace, although not yet in an inamissible mode.

Wherefore, even under this respect, a good action is a way to beatitude already present. Nor did Christ promise only future beatitude to His disciples through the repeated words: "Blessed are they who..." "Blessed shall you be when..."

Conditions of supernatural merit *de condigno*. These conditions are certainly required, the necessity of which the expositors of dogma demonstrate: 1. the state of grace; 2. the moral goodness of the work; 3. a supernatural principle, or the concurrence of actual supernatural grace.

On the universality of this merit. But it is controverted whether or not, besides these, a special intention, either of charity or of exercising a supernatural virtue, ought to move the agent to the act; not because, such an intention being excluded, an act done from supernatural grace would be thrust down to the natural order, but because the concurrence of that grace is bound together with such a motive by an individual nexus, so that either you have the supernatural motive with actual grace, or both are lacking together.

Those who require a motive of this sort admit, even in just men, acts which will be only naturally good.

The opinion which St. Thomas taught as certain is more pleasing to us: "Every act of one having charity either is meritorious or is sin, and none is indifferent" (in 2. S., d. 40, q. 1, art. 5).

This is already persuaded to us by the very silence of the Sacred Scriptures. For to merit eternal life is altogether principal in the Christian life. Therefore if a special intention is required for meriting, that

condition will be read clearly in the revealed sources. But in fact the Sacred Scriptures nowhere expressly mention a moral honesty which in a just man does not pertain to salvation; rather, with no mention made of a supernatural motive, they simply commend various morally good works, for example where they are said to proclaim pure religion [1], so that Christ Himself said in express words: "If thou wilt enter into life, keep the commandments" [2]. They exclude from reward merely a work done from the not right end of vanity and hypocrisy (St. Matthew 6, 1. 5. 16).

Besides the sufficiently open texts of many Fathers, for example of St. Augustine [1], what do the Holy Fathers commonly do? They promise eternal life to those who act from faith; that is, as they themselves explain, to those who are in the state of grace and pursue honesty in acting.

This is also persuaded to us by that continual influx of grace into the works of the just, which, having been insinuated by Christ in the figure where He said that He was the vine and the apostles the branches, is formally handed down by the Council of Trent (Sess. 6, c. 16, *De iustificat.*).

And we are confirmed by reason.

As Lehmkuhl himself (I, 365) admits: "All good acts are referred to the honor and praise of God." On account of this religious respect, every good act has order to God; then the habit of grace and charity effects that the act is the act of a friend of God, that is, of one sanctified by grace and habitually disposed by charity to doing acts of friendship [2].

Consequently, according to that love, the just man acts as often as he observes a commandment, or does a good act; for every good act is a mode of loving God: "he who hath my commandments and keepeth them," said the Lord, "he it is who loveth me" [3]; and the Apostle reduces all precepts to the precept of loving (4). Therefore as often as a good act is elicited or commanded by a will informed by charity, just as it is referred to the free will as agent, and so is moral, so it is imputed to the will friendly to God, and thus is meritorious. Therefore this is the proper force of that habit in the will: that it requires all good acts to be accepted by God as acts of a friend of God, or of a man supernaturally related to God, and hence to be meritorious.

To use other words, concerning the true condition of man, which is that of elevated man, and not merely concerning the natural state in which he could have been but has not been constituted, these words written by St. Thomas are valid: "Wherever there is some due order to an end, it is necessary that that order lead to the end, but departure from the order exclude the end... But God imposed upon the acts of men some order in respect to the end of good... Therefore it is necessary that if that order has been rightly placed, those walking by that order attain the good end, which is to be rewarded; but those departing from that order by sin be excluded from the end of good, which is to be punished" [1]. But the man who acts well walks by the order established by God. Therefore he ought to arrive at the end of the order, unless there stand in the way the state of enmity by which he is turned away from God. For divine Providence will not omit to give opportune, or supernatural, aids.

Those who think otherwise seem gratuitously to ascribe to the agent a positive intention of the natural end. But the matter is not so. The agent acting morally well, while he serves a right appetite, implicitly wills the merit of that act, or the end to which his good action tends, even if he is ignorant of another respect besides the respect of moral goodness.

The same authors seem also to give too much force to the intention of the agent for elevating acts, a force which we ought to refer as received from the gift of grace. You would say that man, as they imagine him, is substantially in the natural order and accidentally in the supernatural order, so that only by a special effort does he act supernaturally; whereas man has been so changed by the gratuitous benefit of God that he is wholly directed to the supernatural end [2]. Cf. also Noldin, *Princ.*, n. 104.

[1] St. James 1, 27.

[2] St. Matthew 19, 17.

[1] On Psalm 30, sermon 2, n. 10 (P.L. 30, 341).

[2] For charity has a more immediate order to operation than grace. It is in the will and renders it apt for loving God by the love of friendship and for acting consequently to that love.

[3] St. John 14, 21. - (4) Rom. 13, 9.

[1] *Summa contra Gentiles*, c. 140.

[2] These things will be treated more fully in the future volume I of the *Moral Questions*.

In the sinner, there cannot be salutary acts, or acts meritorious *de condigno*. On account of the reasons taken from the present state of man, we think that not even in them are found merely natural acts which are morally good, but that all are done from supernatural grace as principles of penance and conversion. Cf. St. Thomas, *De Malo*, q. 2, art. 5, ad 7; in 2 1. S., d. 38, q. 1, art. 2, ad 4.

Going beyond these advances, Ripalda (*De ente supern.*, l. 1, d. 20, s. 2) holds that there is no morally good effort of nature which some supernatural grace does not forestall. Most theologians, however, admit in unbelievers acts morally good and at the same time supernaturally indifferent. The opinion of Ripalda is not opposed by Kleutgen, *Theologie der Vorzeit*, t. 2, nn. 153-158. To us it seems more consonant with the present condition of the human race, with the unity of the counsels of divine Providence, and with the universal salvific will; and it is confirmed by a certain common sense of the faithful, who acknowledge in the good works of any man whatever a certain preparation and positive disposition for grace. Nor does that received statement, "the first grace is the beginning of faith," stand in the way of our admitting it; we shall say that this supernatural aid for acting honestly is given so that unbelievers may be led to faith, and consequently that it can come under the name of the beginning of faith. Nor do the condemned propositions make difficulty, which denied that there are any acts besides meritorious acts or sins, or rejected the distinction between morally honest acts and meritorious acts of the eternal kingdom [1]. For we exclude merit *de condigno* from the acts of those who are not just; nor do we deny the utility of distinguishing natural honesty from supernatural honesty. Unbelievers preserve the natural capacity of doing honest acts: this must be firmly held; but the concurring grace of God effects that the same acts are supernatural and at least meritorious *de congruo*.

[1] Cf. article 16 of John Hus, from the thirty condemned at the Council of Constance and by Martin V, March 25, 1418; and proposition 62 of Baius condemned by St. Pius V, October 1, 1567. (D.B. nn. 642 and 1062).

N.B. Our conclusion concerning the just rests not at all upon the permanent virtue of some first act of charity, but upon habitual sanctifying grace and charity, by which it comes about that the good acts of the just are acts of sons and friends of God. Nevertheless they are bound by the precept of charity to be fulfilled. Cf. 188.

Concerning the object of merit. these things are usefully recalled from dogmatic theology.

1. We can merit *de condigno* only for ourselves. But we merit an increase of sanctifying grace and eternal life. In what way, by what measure grace increases, does not agree among theologians: we more cautiously abstain from offering mathematical or quantitative reasons.

We do not merit other things *de condigno*, because man, through his good works, from divine ordination, is ordered to obtain these things, not others.

2. For ourselves we can merit *de congruo* actual graces, or richer aids: as sufficient, however, not as efficacious, because, since they are efficacious through our free consent, we cannot merit this consent. But we can merit graces which will be efficacious. Even having been made sinners, we can thus merit aids for rising again. Among these aids temporal goods also are found. These, as such, can be given by God even to a work of merely human goodness. Cf. 1, 2, q. 114, art. 10.

For others we can merit the same aids, indeed even first grace itself, *de congruo*.

3. For ourselves we cannot merit first grace, or the first supernatural aid: all proportion fails between our action without supernatural grace and the supernatural object. Nor, while we are just, do we seem to be able to merit, not even *de congruo*, the restitution of justice after a future fall. St. Thomas teaches this, 1, 2, q. 111, art. 7. Yet there are some who think otherwise.

Neither for ourselves nor for others can we merit, not even *de congruo*, final perseverance, insofar as it is a gift distinct both from sanctifying grace and from actual grace. But aids for persevering, or perseverance materially taken, we can both impetrate and merit *de congruo*, for ourselves and for others.

4. Other things being equal, we merit more easily for ourselves than for others.

The quantity of merit depends both upon the dignity of the agent and upon the value or magnitude of the work. Upon the dignity of the agent: therefore the more he has been joined to God through sanctifying grace and charity, the more, other things being equal, he will merit. Hence already the infinite merit which was in each of Christ's actions is evident. Moreover the value of the work is considered both in itself and in the intention from which it flows: according as this has been higher and more intense, so much the more merit increases. But the noblest intention is that of charity. Therefore the more effectively an action has flowed from a will which has been made one with the divine will (charity effects one thing), the more excellent is the action.

Therefore an action will not have greater formal merit insofar as it is more difficult or laborious, but insofar as the difficulty or labor denotes a great work [1]. You may say the same of the rejection of pleasure: that rejection is not good and meritorious for its own sake, but only insofar as it gives place to a higher good.

[1] 1, 2, q. 114, art. 4, ad 3.

Usefulness of asking for special things. Merit *de condigno* is not diminished by the fact that we direct an action to impetrating various graces for others or for ourselves. Indeed from the good endeavors which are thus fostered at the same time, the merit of the action can increase. Therefore,

although already of itself God, who beholds our heart, accepts our good works not only as meritorious *de condigno*, but also as meritorious *de congruo* and impetratory, nevertheless it is consonant with human nature to express particular vows distinctly and thus to join good works with formal prayer [2]. This is to be done at least insofar as we are thereby helped to pray and act better, but not insofar as by a certain scrupulous anxiety it could become harmful to the fervor of charity: in a spiritual matter that fervor is always the chief thing.

[2] Cf. Lehmkuhl, I, 375.

Concerning the satisfactory fruit. Besides the fruit of merit and of impetration, there is also in our good actions, insofar as all are laborious, a satisfactory fruit. We can neither abdicate all the former fruits, nor is it expedient; the latter we can laudably cede to others out of charity, especially to souls existing in purgatory. The Supreme Pontiffs have approved the act called heroic toward the purifying souls. Cf. concerning indulgences.

§ 2. The Necessity, Purity, and Efficacy of Formal Intention

Must we daily offer our actions to God for His glory?. The words of the Apostle, 1 Cor. 10, 31: "Whether therefore you eat, or drink, or whatsoever else you do, do all to the glory of God"; and Coloss. 3, 17: "All whatsoever you do in word or in work, do all in the name of Our Lord Jesus Christ, giving thanks to God the Father by Him," which St. Thomas holds as preceptive, while St. Bonaventure [1] draws them down to mere counsel, in reality indicate nothing about the intention by which a good work must be performed.

They come back to this: act in such a way that you give occasion for glorifying God; act as Christians, conscious of your conjunction with Christ and of the benefits which through Christ you have received from God; and consequently, in a spirit of thanksgiving, do those things which are approved by Christ.

Therefore the precept is not demonstrated which, following Collet, St. Alphonsus enunciates in these words, *De act. hum.*, n. XLIV: "It is necessary several times in the day, at least in the morning, generally to offer to God all one's acts, so that thus the precept of the Apostle may be fulfilled, at least by the virtual intention of doing all things for the glory of God." And the obligation, which we by no means deny, of offering works to the glory of God, requires only these things:

a) that our works glorify God; but all our good works glorify God, unless we reject that connatural relation;

b) that we fulfill the precept of formal love of God: concerning which precept we shall treat where we treat of charity. Cf. Lehmk., I, 375.

[1] In 1. 2, D. 41, a. 1, q. 3, ad 1.

Connatural glorification of Christ, of the Blessed Virgin Mary, and of the Saints. By a connatural relation all good acts are also glorious to Christ. This is true not only of those who profess themselves Christians - which is too manifest - but also of others, since from the grace of Christ all good works are done [2]. Formal praise will be rendered to Christ from this by all who, whether in heaven or even on earth, have known this causality of Christ.

Since, as Benedict XV inculcated more than once, all graces are obtained through Mary, all good works also connaturally yield to the honor of the Blessed Virgin Mary, Mother of God and our Mother.

Not a few things also have a connatural relation to the Saints, for example to the founders of religious orders.

[2] Cf. St. Thomas, 1, 2, q. 14, art. 6, c.

A good work which can be ordered to God, to the Blessed Virgin Mary, or to the Saints, or which is connaturally so ordered, can also from intention be done for honoring God, the Blessed Virgin Mary, or the Saints. And then, but only then, the act receives a species from that intention and becomes an act of religion.

But it is necessary that the act can truly express an order to God or to the Saints. Hence if someone wishes to refer an indifferent act, for example a walk, to the Blessed Virgin herself, he does not refer it except insofar as at the same time it is perceived to be licit, or, for example from the mode of temperance observed, is specially honest [1], or unless by its external reason it honors Mary, as if it has become a pilgrimage.

[1] He merits specially from the object who seeks delight from the honest good, virtue, God; from the end, who seeks it on account of the honest good, that he may flee dangers, become more spirited for holy labor; from the mode, who seeks it temperately. St. Thomas uses this principle: "As the operation is, so is the delight following it." But voluntary delight contains approval of the object in which one delights. Therefore delight concerning a good object is good.

Concerning purity of intention. A twofold purity of intention must be very carefully distinguished: the purity by which every reason opposed to charity, such as vanity, sensuality, etc., is removed; and the purity by which a less sublime intention, although honest, is excluded.

The former account of purity cannot be sufficiently commended: by the mixture of a less ordered affection, the act is at least partly corrupted.

But the other purity must be proposed cautiously. For by the fact that we are helped toward an act by natural propensity, merit of itself is not diminished. Nor without great utility did provident God place propensities of this sort in human nature. Yet *per accidens*, insofar as it diminishes the psychological liberty of the act, it can make the act less meritorious. Besides, he who has need of such help demonstrates lesser charity and consequently lesser merit than he who is moved perfectly by a more sublime affection.

Wherefore in neglecting such a propensity this utility can be present: that the act be more voluntary; that from the unity of intention the more sublime affection itself become more intense.

Nevertheless, the powers which are at our disposal must be prudently reckoned, since it is better to do good with the aid of nature than, with that aid spurned, to omit the good: "Nature is not contrary to grace: hence the admixture of nature with grace does not cause remission in the effects of grace, which is caused by the intermingling of a contrary." Thus St. Thomas, in 3 S., d. 30, q. 1, a. 3, ad 5, concerning the love of friends.

Moreover the intention of beatitude corrupts the good of virtue in no way, since beatitude is our perfection; since it is the end to which one must come by virtue. Cf. Sertillanges, *La morale de S. Thomas*, c. 17, n. 17.

The use of renewing intention, for example through daily oblations made to God of the whole of our action, contains these utilities: the oblation itself is in itself a laudable act of religion or charity; more easily, through it, while acting, frequent memory is fostered of the intention of religion, faith, and charity, by which the honesty of good works is increased; it confirms the will in good purposes: these, as we are men, lack perpetual efficacy and therefore must be renewed.

At the same time, however, it must be denied that through oblations of this sort acts become meritorious which are not elicited from the strictly so-called virtue of such intention.

Nor, even if the intention has been virtual, will it avail to remove the indifferent nature of the object. But, insofar as the act is apt for this, it can add the honesty of an extrinsic end, and render the honesty which the act contains of itself more certain to us.

Conversely, a universal oblation made to an idol is indeed in itself most evil; nevertheless it does not corrupt except those acts which have truly been commanded by such an intention.

It is one thing for merit to be acquired, another for a disposition to be made concerning the acquired fruit of an action.

The oblations of which we speak here indeed cannot render meritorious acts into which they pour no virtue; but they suffice for efficaciously disposing of the true fruits of actions, for example for the conversion of sinners, in favor of the souls of purgatory, just as, by a will actually past and merely habitual, Masses are applied to various intentions. For a future thing can be efficaciously ceded or given by a present act.

Summary

I. By moral imputation, in the forum of God and in the opinion of men, actions or effects are ascribed to a free author, unto praise and merit, or unto blame and demerit.

II. One's own action or omission is imputed according to all intended notes; indeed, according to all notes which are known to be present, if there is question of an evil thing toward which the will is affected as it truly is. For if the thing is loved abstractly, only the loved notes are to be considered.

III. An effect, or the further resultance of an action, can be intended, or merely permitted, either actively or passively. An intended effect is always imputed. A good effect is not imputed unless foreseen and intended; an evil effect, negatively permitted, is imputed insofar as there was a positive obligation of impeding it; but positively permitted, it is imputed insofar as one had to abstain from the action lest the effect follow. It will always be imputed if it could have been avoided without omitting the action.

IV. An evil effect which is permitted to follow an action is not imputed if the immediate efficiency is diverse, and the permission is excused by a proportionately grave reason. The reason is that the causality of one's own will is immune from the malice of the effect, and, on account of the proportionate cause, satisfaction has been made to the positive precept of taking care that the effect not follow.

That positive obligation varies according to the gravity and proximity of the evil effect, according to the nature of the precept, and according to the cause for acting. Guilt for a wrongly permitted effect is

contracted when its cause is posited, and it is not changed whether the effect follows or not. But from the effect followed or not followed, damage or reservation can depend.

V. The action or omission of another can never be the strictly so-called effect of one's own action. Nevertheless it is imputed to us on account of cooperation, on account of the imitation of a good example or scandal, on account of fraternal correction made or omitted. Yet these, if there is question of another's evil action, can be excused by a similar and stronger reason than that by which permission of an evil effect is excused.

I. Merit is the retribution of a work before him to whom it expresses an order. The common conditions of merit are peace, or at least begun pacification, between the agent and the one making retribution; a work freely done; a relation either connatural or explicit to another's service; acceptance of the work by the one rewarding; and proportion between the work and the reward.

II. Merit is distinguished as human and theological, or before God. This latter is *de condigno* and *de congruo*. *De condigno* means the title of some justice; *de congruo* means only a partial title: it is hoped for from the persevering benefit of grace inviting and from the good effort of man. There is no merit except in the state of a wayfarer. Merit now is supernatural; natural merit would befit the works of a man not elevated.

III. The heavenly reward toward which we tend is essential and intrinsic to us; already now it is conferred inchoatively.

IV. Merit *de condigno* requires the state of grace, the moral goodness of the work, and a supernatural principle. It does not seem to require a special intention referring the work to God. Wherefore every act not evil and moral of a man having charity is meritorious.

Nor in the sinner - indeed nor in the unbeliever - do there seem to be supernaturally indifferent acts, or acts endowed with merely natural goodness.

V. We can merit *de condigno* only for ourselves; namely, an increase of sanctifying grace and heavenly glory. *De congruo* we merit for ourselves actual graces as sufficient; indeed graces which will be efficacious. And after we have become sinners we can merit aids for rising again. We cannot merit first grace, nor, while we are just, the restitution of justice after a future fall. Let the same be said of final perseverance.

For others we can merit the same aids, indeed first grace, *de congruo*.

For ourselves and for others we can merit *de congruo* and impetrate aids for persevering. Other things being equal, we merit more easily for ourselves than for others.

VI. The quantity of merit depends upon the dignity of the agent, and upon the value of the work, considered both in itself and in the intention from which it emanates; but the noblest intention is that of charity. Merit *de condigno* is not diminished by the fact that we direct an action toward impetrating various things for ourselves and for others.

VII. We cannot abdicate all the fruits of merit and impetration; nor would this be expedient. But we can laudably cede satisfactory fruits to others, especially to the souls of purgatory.

VIII. All our good acts glorify Christ and His Mother; many also glorify the saints.

There is no precept of a daily oblation of actions to be made to God.

A formal intention of honoring God or the Blessed Virgin through a congruent act adds a new species of goodness.

IX. Every impurity of intention must be purged; a more sublime intention must be prudently procured.

X. The use of renewing a good intention is very useful to the soul; nevertheless it does not remove the indifference of the object, but adds the honesty of an extrinsic end, and renders more certain the merit of intrinsic honesty. A most evil universal oblation made to an idol nevertheless corrupts only acts truly commanded by such an intention.

But by one oblation we can efficaciously dispose of the alienable fruits of our actions.

Conclusion

The fruit of our inquiry seems chiefly to be this: that we should make much of the moral liberty of acting well, without which psychological liberty lacks price and dignity, indeed almost use. The perpetual influx of the grace of God fills us with joyful hope of an almost continual increase of merits, while at the same time exhorting us that, by intending and extending the command of our will, we should endeavor unceasingly to multiply deliberate actions, in which almost our whole truly human life consists, with the vice of inconsiderateness routed and the yoke of the passions shaken off.

Treatise III: On Laws

Introduction — On God's Ordination and Human Obligation

Intention of the introduction. It is not now proposed to us that we should here attempt to treat at length and polemically, with diverse opinions recited and rejected according to their merit, the questions concerning divine law and human obligation which are examined and disputed *ex professo* in moral philosophy. With God's favor, we should wish only, by the distinct presentation and exposition of certain notions, to prepare the way for obtaining for ourselves a scientific knowledge of laws and sins.

The divinely constituted order. Non-rational beings are led to their end by provident God through a physical necessity of acting, or determination; but man partly through moral necessity, or obligation, partly by morally free option by which, subordinately, that is, with the divinely constituted order intact, he himself predefines an order either for those subject to him or for himself. For just as he has received being, so from God, the universal provider, he finds an order constituted toward the common good of the whole human race, indeed of the whole created world. That order is pre-established from eternity by the purest and immutable divine act which is the very essence of God; but in the mode in which, because of our weakness, we are compelled to explain the divine act and make it as it were "human," the same order results from the eternal divine ordination, and consequently formally from the eternal command by which the divine intellect, under the motion of the divine will loving His infinite goodness to be imitated in the created world, efficaciously decrees creation itself. For insofar as order affects the essences of things, by one and the same intellection and will the world is created and ordered, or God is creator and orderer.

Besides, we are taught by faith that, by a positive will of God beneficent beyond measure, rational creatures have been called to a supernatural, that is, divine, end, and therefore a more sublime ordination of the world has succeeded in place of the merely natural one.

Finally, by the eternal divine foresight, provision has been made for the fall, or the culpable degradation of man, through the better order of the repaired world, to which Christ is assigned as head and end.

Proceed then: the human intellect perceives the essential, or natural and necessary, order of things; and thus human reason is said to participate in the eternal divine reason by its very cognition. At the same time it perceives the necessity of conforming itself to this order; this necessity it expresses by that mysterious word: I ought, and indeed absolutely, independently of every condition or supposition.

Formal and express subjection. Besides, he who formally acknowledges in that order the divine ordination immediately, by the spontaneous conclusion of the intellect, renders by the same word *I ought* the necessity of formal subjection under the commanding will of God.

Moreover that subjection extends itself to the order itself constituted by the positive will of God: for the necessity of obeying God elevating and repairing man is demonstrated as contained in the natural law itself.

Furthermore, the pre-established order appears to be completed and perfected, with respect had both to human society, or the common life of men, and to the singular life of each one. Thus, moreover, human reason, by the active faculty of providing for order, participates in the active excellence of the divine reason ordering.

Yet this active ordination must be composed, as we just warned, with the necessary observation of the order already constituted by God, either necessarily or freely, so that it is not a subversion of that order, but on the contrary its completion or perfection.

The present question concerning obligation. If man contemplated the universal order in God Himself, he would certainly acknowledge and adore Him formally as the author of order, and would conceive the necessity of obeying formally as theological, or as existing toward God.

But now he reads the order in created things themselves and in his own nature. Hence without the express and formal acknowledgment of God that mysterious *I ought* is pronounced and conceived. Hence a question, neither recent nor light, has arisen: what does psychologically the "I ought" contain, and by what cause is it generated in us; or what is its ontological or objective explanation?

This question differs formally from this other: whenever a man acts in a different way from that in which, according to the dictate of conscience, he ought to act, does he sin theologically or not? The former question pertains here; the latter is conveniently deferred to the treatise on sins. Yet we do not deny that it depends virtually on the former. For this reason we have affirmed a merely formal distinction between the two questions.

The description of obligation, or its nominal definition, agrees sufficiently among doctors. It means an objective absolute necessity imposed on the will. Objective necessity is opposed to subjective coercion or determination to one thing, and is a necessity which is perceived by the intellect as if an object and exhibited to the will. It is absolute insofar as, just like material or physical necessity, it excludes every exception. It is imposed on the will insofar as the will at the same time experiences itself as psychologically free and yet bound.

With this description there agrees also the psychological analysis of the more accepted philosophers. Thus Rauh [1], in the sense of moral obligation, found these things: the spontaneous (not free) idea of a thing as to be done; the consciousness of that idea as of a thing free and yet, by a spontaneous act of reason, as if extorted; various effects of sadness, peace, as signs of these actions.

That spontaneous dictate, according to many, coheres with a certain innate and invincible appetite, invincible at least for this reason, that it remains in the very act by which it is contradicted, so that one acting otherwise is in a certain way absurd, while his practical-practical conclusion (or conclusion concerning action as here and now to be done) contradicts the necessary more general, or speculative-practical, judgment by which he judges: good is to be done, evil is to be avoided.

But is that appetite formally the appetite of my happiness, so that our spontaneous intuition - good is to be done, evil is to be avoided - is a certain conclusion of a reasoning of this sort: I wish to be

happy; I cannot be happy unless I do good and avoid evil; therefore good is to be done and evil is to be avoided?

This explanation is shown false by the intimate sense itself. He who says that he is obligated often abstracts from his own happiness. Indeed he does not judge himself freed from obligation because he erroneously thinks the action to be done is opposed to his own happiness. Suppose some materialist who judges that the present life, that life namely besides which he holds there is none, must be sacrificed for his country.

Does the same dictate of obligation rather cohere with another profound will or innate inclination, that is, with an inclination toward that order which reason detects, and which therefore is also called rational? This inclination toward the honest good is in our very nature, which, as it imitates divine being, so also imitates divine holiness [1]. On account of divine holiness God absolutely wills the order of reason; on account of the participated holiness of God, our will has a necessary propensity to doing the good simply such and to avoiding contrary evil.

But shall we find in a certain innate propensity, or necessary subjective will, an adequate explanation of subjective obligation? If we observe ourselves psychologically, that dictate, *I ought*, expresses more than a certain innate propensity or inclination, for instance toward the honest good, which remains even when by my particular choice I contradict it. For conscience testifies to us more than this: "I act against my inclination," which it reports to me whenever I abdicate or neglect some appetite. Consciousness of inclination would lead me only to the conditioned dictate: "if you wish to obey your inclination, you must act thus." But the word *I ought* is much more absolute; it is released even from every inclination: whether I have this or not, nevertheless I ought.

If matters stand thus, nothing remains except this: the word *I ought* expresses the necessity, confusedly apprehended, of subjection to that order toward which I have an inclination; this subjection is immediately perceived in my created, or dependent, nature. Therefore it renders the consciousness of a certain Superior who must be obeyed. To use other words: *I ought*, that word, does not signify: by physical necessity I will; or by physical necessity I incline; but: by moral necessity I am compelled - moral, I say, because in my perceived necessary subjection the same thing is perceived: otherwise, I act badly; and I can indeed act badly physically, but I cannot by another reason, which I call moral and which is imposed on me.

And so the necessity of the divine will is explained by the infinite holiness of God; the moral necessity of our will is explained by our participated holiness and by our perceived subjection. Not our holiness alone, but this holiness completed by the intuition of our subjection, morally binds our will.

[1] *Revue de Metaphysique et de morale*, 1902, pp. 653-660, *Le sentiment d'obligation morale*.

[1] Cf. St. Thomas, 1, 2, q. 91, art. 2, c.

Summary

By the same intellection and will by which He created the world, God ordered it, morally binding the free human will both to the essential order and to the order superadded by His positive and munificent will. But the concept of moral obligation, which is expressed by the words, "I ought absolutely," does not seem able to be explained by a certain profound and physically necessary will of

appetition, whether of one's own happiness or of the honest good; but it expresses the necessity of subjection to the order of reason, or at least a confused consciousness of a Superior who must be obeyed.

Title I: On Laws in Common

The order of speaking will naturally be this: first we shall treat of laws in common, then of divine law, then of human ecclesiastical law, finally of civil law. Between divine and human law we shall briefly explain the account of the law of nations.

Disposition of the title. We shall distribute this first Title into ten chapters in this way: I. The notion and essentials of law, where we shall speak of promulgation itself; II. The properties of law; III. The sanction of law; IV. The divisions of laws; V. Interpretations of law; VI. The author of law; VII. The subject of law; VIII. The observance of law; IX. The cessation of law; X. The diminished account of law in precepts and counsels.

Yet in the general exposition this must never be omitted: that the account of legislator is not univocal in God and in man, but principally belongs to God, and analogically, under God, to men.

The usefulness of the treatise is manifest, since there is question of the very measure of human actions, which are the most formal object of moral theology.

Chapter I: The Notion of Law

The divine Reason and Will, which create the whole world, order the same, or fittingly dispose it to its end. For the whole world, with its parts, is a certain whole whose unity and finality must be preserved and strengthened by a wise ordination. But a fitting disposition will be efficacious and adapted to the nature of things. Therefore irrational creatures will be drawn by physical necessity, but rational creatures will be moved insofar as practical dictates concerning the supreme ordination to be observed and completed are impressed upon their intellect, without violation of their nature. That is, they are to be induced to act freely and freely to abstain from action. And since the will, or their moving principle, is a rational appetite, they cannot be induced thus unless a norm of action is perceived by the intellect. Consequently, the norm must be authentically or authoritatively notified to the intellect; that is, an intimation or promulgation of the divine ordination is required.

By a not dissimilar reason, those who, under God, have human actions to be ordered must imperatively propose their practical dictates to the intellect of those whom they rule.

Hence the classic definition of law is demonstrated: "An ordination of reason for the common good, promulgated by him who has care of the community" (St. Thomas, 1, 2, q. 90, art. 4).

Ordination means disposition according to a principle of unity, which, when there is question of the universe, is primarily divine glory, but secondarily consummated perfection, or the beatitude of rational creatures.

Of regulating reason: for reason directs human actions.

For the common good: for the very end to which individual men are directed is their common good, whether you consider God, or the societies to which men are ascribed.

By him who has care of the community: whether by the title of one ruling, or by the title of one representing the multitude to be disposed to its end. St. Thomas mentions this title, 1, 2, q. 90, art. 3.

Promulgated or intimated, that is, imperatively communicated to the intellect, in which consequently the ordination of the legislator himself exists participatively.

Corollaries. I. The essentials of law insofar as it is for the common good. For the value itself of law there is required negatively: that it be honest, or not inducing to anything against the order either of nature or of positive divine law; that it be just, that is, that, insofar as the common good permits, it preserve distributive justice in apportioning common goods and burdens, and thus violate no one's right.

Positively, it is necessary that it conduce to the common good, and consequently that it be possible of observance not only physically but also morally, or not too difficult; and that it be necessary, or at least useful.

Concerning these conditions these things must further be observed:

1. It is metaphysically repugnant that the most wise God should order things which do not satisfy the necessary conditions. Hence these conditions are prescribed by the divine law itself only to human legislators. In divine law they are not to be attended to except, where doubt can arise, for judging concerning the true origin of an ordination which is presented as divine.
2. A law which commands dishonest things is destitute of all value, and it is never right formally to cooperate with such a law. But a law can be honest which does not punish certain evils, indeed positively permits them, yet without formal approval. Wherefore, the circumstances having been considered, certain "liberties" can be sanctioned, for example of the press, of associations, of opinions, not indeed that depraved things be written in print or propagated, but with foresight that many men will abuse that faculty. Such things will be able to be sanctioned if that license seems more to be desired than the restraining of liberty.
3. Although an inequitable law, or unjust law, as such, is invalid, nevertheless it can happen that, on account of the useful parts which it contains, or for avoiding greater evils, it must be tolerated and executed by good citizens, when there is question of goods which can freely be abdicated. There then accedes a certain higher law, of the natural order, which commands that, on account of the common good itself, those inequities, or inequalities, be tolerated.
4. What difficulty is excessive must be estimated from the condition of the persons and from common necessities. Thus upon religious, public officials, with attention to their state, heroic things are sometimes imposed. Thus in time of war heroic things are demanded from many citizens. A law which demands such things becomes useful for the common good, so that the reason why it would not be valid must be said to fail.
5. Usefulness for the common good suffices if it is indirect and mediate. But concerning this the legislator himself makes judgment. Wherefore manifest uselessness, and indeed general uselessness, is required if obedience can be refused on account of a reason of this sort. If utility ceases in the particular case alone, nevertheless the law will often remain to be observed, whether on account of avoiding scandal, or because the law will have been made for guarding against a general danger. Such are the laws concerning the prohibition of books. For then, if the law has been ecclesiastical, c. 21 must be observed: "Laws made for guarding against a general danger urge, even if in a particular case the danger is not present."

Moreover deception is easy in this matter. Thus in a man greatly mortified, or one who assiduously frequents church, the reason for the precepts concerning fasting or hearing Mass on a feast day can seem to have ceased, while nevertheless the reason of common observance remains.

Finally, lest a greater evil follow, a subject also can be obligated to continue observing a useless law. Yet if danger of mistake and scandal has been entirely absent, St. Alphonsus did not dare to disapprove the more benign opinion. For example, if it is entirely certain that a man has been baptized and in vain one writes to obtain a document required of itself, then, from epikeia, that demand of the document can be omitted.

II. Insofar as law is for a community, promulgation itself pertains to its essence. "Laws are established when they are promulgated," says the Code of Canon Law, c. 8, § 1. But promulgation is: "the solemn intimation of a law so made that it can become known to the community."

Yet it is not required that the law can strictly reach all, since law directly affects not individuals but the community. Nor is it necessary that it already be actually known to the community. For from the fact that it can become known to the community, it begins efficaciously to obligate the individual persons who know the law. But a private communication, sufficient for a few, does not obligate even those who know the law or ordination. But when promulgation has been made, and not before, the law obligates all subjects in first act; but in second act only those who are not excused by ignorance, or who have certain knowledge of the law.

For concerning others the principle is valid: "No one is bound except through knowledge of the law or precept." For no one can command anything to a man, or to a rational creature, unless his practical dictate, or what he wishes to command, is communicated with the mind of him whom he commands. But as long as this is not truly known, at least in a human way, there has been communicated not the dictate of one commanding, but only a doubt or suspicion of it. Cf. St. Thomas, *De Veritate*, q. 17, art. 3.

With the nature of the thing considered - for the legislator can establish more benignly concerning his law - as widely as the law is knowable, so widely is it promulgated and obligates in first act. Wherefore doubts concerning the sense of the law which can be resolved by private study will of themselves not prevent the law from having been promulgated according to that true sense. And by whatever path, for example by authentic declaration, that sense then appears, the excuse of ignorance will at the same time be removed. But it can happen that a law is objectively obscure or ambiguous, so that an inextricable doubt remains. An authentic explanation of this doubt needs a distinct promulgation, since that signification was not promulgated with the law itself. Hence, from c. 17, § 2, an authentic interpretation which explains a doubtful law must be promulgated.

Lemmas. I. Vacation of the law. Although for the present obligation of a law it is not necessary of itself that it already be actually known to the community, nevertheless, with a particular reason excluded, a human legislator prudently is accustomed to defer the obligation of the law until the law becomes morally known to the community itself. Through that interval of time, the law is said to vacate.

II. Physical laws and laws of the arts. Law means a norm of acting. Hence, insofar as they agree in the account of norm, there are also physical laws, which irrational things obey or follow by subjective necessity; and laws of the arts, to which exterior works must be accommodated so that the intended end of utility or beauty may be obtained. But the laws of human action, insofar as they are a rule of morals, are also called moral laws.

III. Precepts. Those things also which are commanded to individuals to be done or omitted can be referred to the common good, either immediately, as if they are commanded on account of the common good, or mediately, insofar as the private good itself is of interest for the common good. Therefore many things are also prescribed to single persons or to several, which are called precepts. (Cf. below for a more accurate notion.)

Summary

I. Law is defined: An ordination of reason for the common good, promulgated by him who has care of the community.

Ordination, or disposition according to a principle of unity, is made primarily, when there is question of the universe, according to divine glory, secondarily, according to the beatitude of rational creatures.

Of regulating reason.

For the common good, such as every end of man is.

By him who, by title of one ruling or of one representing the multitude, has care of the community.

Promulgated, or imperatively communicated to the intellect of subjects.

II. For the value of a law there is required negatively that it be honest, commanding nothing against the order of reason or a superior law, although perhaps it tolerates many evils; that it be, insofar as the common good allows, just, or that it preserve the norm of equality and violate no one's right. There is required positively that it conduce to the common good and consequently be possible of observance and at least indirectly necessary or useful. In order to rule the community, it is also required that through intimation it be able to become known to the community, that is, that it be promulgated.

But individual persons are actually bound when they have human knowledge concerning the law. To dissipate a true obscurity of the law, a new promulgation is required.

III. Vacation of the law designates the time through which a law, by the benign will of the legislator, does not yet obligate, although it has been promulgated.

Analogically there are also laws of the physical world and of the arts.

IV. But to individual men precepts are given, also for the common good.

Chapter II: The Properties of Law

As properties of law there are customarily numbered: obligation, which regards the efficacy of law; universality, which regards the subject; perpetuity, which regards duration; extension to future things alone, which regards temporal extension. (Territoriality pertains only to a human legislator.) In what way each is to be understood must be said briefly by us.

I. The Obligation of Law

The first and common efficiency of law is called obligation. For unless it binds the will, law will not avail to induce the unity which the legislator intends. So indeed for the most part. But from the very reason added, it is evident that the obligation of law coheres with its efficacy, or that the necessity of obligation is derived from the necessity of efficacy. Therefore if, without properly so-called obligation, law can be efficacious, obligation will not pertain to the essence itself of law. Hence moral laws are distinguished, whose transgression immediately induces theological guilt, or which immediately obligate; and penal laws, which merely impose the necessity of undergoing a penalty; while those are called mixed which obligate under sin and penalty.

Concerning penal law. Among writers prior to Suarez, there were some, for example Sylvester, who denied that merely penal laws could be had: for it would be repugnant to the essence of law that it not obligate to the commanded act; nor could a penalty be inflicted without guilt, while guilt is excluded if obligation is denied.

Yet obligation is not expressed in the definition of law; nor does it seem strictly to be contained in its concept. For a legislator who wills that his practical dictate concerning a thing to be done become the common practical dictate of his subjects, in reality wills to order them to the common good. Therefore his will or intention is a legislative will. And if that will is commonly efficacious, it truly orders the subjects. But this efficacy can sometimes be obtained even without obligation or bond of the will; as if, among those zealous for perfection, he obtains spontaneous docility from most at least; just as also many singular precepts are given efficaciously without obligation under sin, by a simple signification of the will. If now some exterior penalty seems opportune but sufficient for efficacious direction, the same legislator will be able to bind the will only by the penalty to be undergone. This penalty is just, because it has been imposed for the transgression of an order legitimately constituted, although not essential, nor commanded under sin. There is a delict in the external forum; it is not necessary that there be one in the internal forum. And thus reply is made to the objection: no penalty without guilt. There is juridical guilt: which suffices.

Besides, the very mode of conceiving penal law varies. In the nineteenth century there prevailed the explanation through disjunctive obligation, as if the legislator had left the option of obedience or penalty. Thus C. D'Annibale, *Summula*, I, n. 207; thus Bouquillon, *Theol. Fundament.*, n. 131. But today that opinion is deservedly abandoned, since the legislator by no means indifferently wills the one or the other, but immediately wills and imposes one thing: obedience to his law, yet in such a way that the moral obligation is terminated to the penalty alone to be undergone or suffered. For, as Wernz writes [1]: "If obligation is imposed only to undergoing a penalty, it can happen that the obligation arises only after the sentence of a judge." That opinion, which is ascribed to Billuart [2], and pleases

Koch [3], Prummer [4], Makoto [5], is already repeated in Suarez [6], when he says that penal laws are "binding under threat of penalty, although they do not bind in conscience to the act on account of whose transgression they bind to the penalty"; and he describes a purely penal law as one "which has only one quasi-hypothetical precept, of sustaining such a penalty or inconvenience if this is not done."

Merely penal laws are found only in human laws; all divine laws obligate conscience and are sanctioned by penalties. In human laws themselves, Bouquillon [7] judges that merely penal laws cannot reasonably be given "unless the burden imposed of itself avails for obtaining the special end of the act, and for compensating in some measure its defect, but not if it has merely coercive force." Thus he understands fasting under the penalty alone of alms, a tax under the penalty alone of a fine; but the use of ecclesiastical dress could not be imposed under the penalty alone of a fine, because the fine would not compensate the defect of the thing enjoined. Yet we do not think that this is established. Suarez estimates more simply that often, for avoiding dangers of souls, it can be expedient that a merely penal law be made, "because some coercion is useful; and that a greater one not be made is also useful to souls and pertains rather to sweet providence than to rigor" (l. c.).

[1] *Ius Decretalium*, I, n. 109. Moreover he himself abstains from every explanation.

[2] *De Lege*, diss. 4, art. 4.

[3] *Lehrb. der Moraltheologie*, P. I. S. 1. c. 2.

[4] *Manuale Theolog. moralis*, n. 209, ss.

[5] *Institutiones iuris canonici*, I, n. 221.

[6] *De Legibus*, l. 5, c. 4, n. 1.

[7] *Theolog. mor. fundament.*, n. 131.

Concerning the gravity of moral obligation. The guilt under which moral law obligates is judged to be adapted to the matter itself, so that it is grave where a matter of grave moment is treated, unless the legislator has sufficiently signified a diverse will. For just as he can abstain from the precept itself, so he can temper the force of his precept.

But beyond the capacity of the matter, or to obligate gravely in a light matter, at least a human legislator cannot.

Moreover the moment of the law itself must be prudently measured from the object and end, as will be declared more in the treatise on sin.

II. The Universality of Law

"Law is a common precept" [1]. And so it is called universal insofar as, even if many laws are not applicable to all subjects either collectively or distributively, and laws are given which directly regard one person, for example the Pontiff, the King, nevertheless every law considers subjects formally not as singular persons, but as pertaining to the community, of which they are the head or members. That is, to insist on the example brought forward, the law will be not concerning Gregory the Pontiff or Edward the king, but concerning the Pontiff or the King in general.

But universality understood thus is a true property of law, since it flows from the essential notion itself of law, by which it is said to be an ordination for the common good.

For if it is for the common good, it will reach singular persons or families or lesser groups under the respect of their relation to the community. The respect will be demonstrated either by office (a law concerning a vicar general), or by kind or condition (a law concerning clerics), or by place or habitation (a law concerning residents, concerning travelers).

Certainly it can be demanded by the common good itself that something be commanded to a certain singular person as such; but that command will be called by another name: that of precept.

Therefore do not confuse the community for which a law can be made, and the community concerning which a law is made. The former must be such that it is, or can be, a perfect community; the latter can be any community whatsoever, even a lesser one. Thus a law is not made for a parish; but a law concerning such a parish can well be made.

[1] Cf. Suarez, *De Legibus*, l. I, c. 6, n. 17.

III. The Perpetuity of Law

Every law is perpetual, at least by this reason, that when its author has died, it itself does not cease. For the author of law, as such, represents the community, which does not cease by the death of the prince.

In general also by law provision is made for a permanent necessity or utility of society. Wherefore most laws are perpetual by this reason also, that they are not made for a certain day, but are accustomed to remain until they are explicitly or implicitly abrogated. In this sense they are sometimes said to be "going to be valid perpetually." But human laws are not positively perennial, nor is perenniality contained in the account of law. Nothing prevents laws from being made, even divine laws, for a certain time or until the circumstances persevere. Think of the Old Testament, which, the priesthood having been transferred, was abrogated [1]. Such a temporary law, according to the testimony of the Holy Office, March 20-22, 1918, are the prescriptions concerning modernism to be overcome (*A.A.S.* X, p. 136).

Therefore it must be attributed to the positive will of the legislator if temporary sanctions, as such, are called by a name other than that of law.

And so positive perpetuity cannot strictly be exhibited as a property of law.

[1] Cf. Epistle to the Hebrews 7, 12.

IV. Extension to Future Things Alone

Laws regard future things, not past things, unless provision is made in them concerning past things by name. Thus wisely the Code of Canon Law, c. 10.

If we consider only the effect of obligation, the rule concerning the application of law to future things alone is a true property of law, which admits no exception. For since law cannot impose its obligation except by means of promulgation or notification, it is manifest that no obligation can be had unless it is posterior to the law. Acts done at a time when the law did not exist could not violate the law, or constitute anyone guilty. But laws have other permanent effects in the juridical condition (for example of an administrator, of a professed person) to which they gave beginning. And it is in the power of the legislator that he apply the regime of a new law to present effects of anterior acts or of a status previously possessed. Nothing impedes him from declaring a juridical act, for example a

testament or sale, invalid, because the conditions of the new law have by no means been satisfied. Yet the common good requires that citizens not be disturbed in the peaceful possession of their things without a special cause. Wherefore the Code enunciates the admitted principle concerning the "non-retroactivity of laws," tempered however by clearly established exceptions.

The corollary of this principle is that acquired rights are not taken away by a new law.

But the whole difficulty is in explaining an acquired right, from which a new law of itself does not derogate. Etymologically *ius quaesitum* is the same as *ius acquisitum*, an acquired right. But we have handed down a twofold explanation of acquired right in the *Epitome iuris canonici* (I, n. 45 a).

1. From an antecedent law as such, no acquired right immediately arises. For the law was known to be mutable, and what was founded on the law alone necessarily falls with the foundation, or the law. Thus what the capacity or incapacity of a minor person is must be estimated from the present law. But an acquired right is had when a title diverse from the law, for example a contract, intervenes to firm up some juridical condition or some honor or privilege. Thus acts legitimately done by a minor according to the preceding law will of themselves remain valid, although, from the new law, such acts can no longer validly be done by them.
2. An acquired right is taken away if, on account of his own past deed, or the new law not having been observed, someone suffers inconvenience or detriment. But it is not taken away if the law is applied to him because, independently of his own past deed, he is now in the required conditions of application. Suppose a new incapacity to be introduced for clerics or professed persons: even those who before the Code had become clerics or professed persons will contract this incapacity, unless the legislator positively wills to treat them more benignly.

Summary

The properties of law are:

I. Obligation, insofar as the efficacy of direction requires it. Hence laws are moral, obligating under guilt; penal, under penalty; mixed, under guilt and penalty.

A penal law is not to be conceived as disjunctive; but its efficacy is provided for by the sanction of penalty alone, without another obligation.

The gravity of moral obligation is judged adapted to the matter; nor can at least a human legislator obligate beyond the capacity of the matter; yet it remains whole to him to obligate below such capacity.

II. Universality, insofar as law reaches subjects under a common and not individual account.

III. Perpetuity, insofar as, when the author has died, the law does not cease. But a law can be made for a certain time.

IV. Extension to future things alone, insofar as of itself law does not regard past things unless this is expressly provided. Wherefore it does not take away acquired rights: that is, it does not suppress a title, diverse from a superior law, which immediately founds a juridical condition; nor on account of a past deed does it generate trouble or inconvenience for subjects.

Chapter III: On the Sanction of Law

— Sanction means, first, the act of making a decree or law; hence, in law today, not rarely, by this name is called the act by which a king or the president of a republic, by signing his name, as it were completes the law. Then it signified the law itself or decree, especially one which is urged by a penalty. And because both a penalty and a law are decreed or sanctioned, sanction is used of the penal coercion which is added to law for strengthening the law or for compensating the social detriment brought about by violation of the law.

Penalty, properly, is an evil contrary to the will and inflicted because of fault. It is distinguished as concomitant, which violation of the law brings with itself, by a greater or lesser intrinsic necessity (wherefore it is also called an internal sanction), and external or inflicted, which has an extrinsic cause. Every penalty, as announced, is medicinal; for it is announced so that the law may be better observed. But as inflicted, that penalty is medicinal which immediately tends to the amendment or good of the delinquent himself, while vindicative penalty is imposed in vindication of the violated order.

That sanction of law cannot be confused with its obligation. Obligation pertains to the directive force of the law, sanction to its coercive force. Obligation affects all subjects; sanction affects only transgressors of the law. Obligation requires the free will of the subjects; sanction of itself is repugnant to the will. Obligation is immediately a binding to good order; sanction is immediately the privation of some good.

Of itself, indeed, a good will can be helped both by rewards and by punishments, and the opposition of the passions can be moderated. And thus, in a broader use, the word is taken, for example, by Noldin, *Principia* n. 108. Human legislators, however, are not accustomed to add the stimulus of rewards to their laws. Nor could they generally do this. For since a sufficiently universal external observance of the law is procured, to which alone the human legislator can attend, most citizens would have to be rewarded. But since he himself would have to draw the aids from the community itself, by a reward too general he could only restore to the community what he had received from the community; that is, citizens would receive as a reward their own gifts. Therefore even for this reason divine law excels human law, because it remunerates virtue with an infinite reward.

Summary

— The sanction of law now means the penal coercion by which the law is urged. Penalty, or an evil contrary to the will and inflicted because of fault, is distinguished as concomitant or internal, and inflicted.

God alone at the same time sanctions his law with magnificent rewards.

Chapter IV: The Divisions of Laws

— We have already suggested the division from the author, which will be more demonstrated in chapter VI. From sanction, we distinguished moral, penal, and mixed laws.

Besides these divisions, the following are to be attended to by us.

1. Affirmative and negative law. - An affirmative law commands an act; a negative law forbids an act. Each obliges as long as it is in force, and therefore always; but the former does not oblige for always. For an act prohibited, within the limits of the prohibition, must be omitted at any moment whatever; whereas an act commanded is not to be done at any moment whatever.

Moreover, every affirmative law admits just delays and also omissions; for the omission of some act does not intrinsically affect the other acts which are done: these remain in themselves what they were, good or evil. But, on the contrary, an act prohibited is, while the prohibition remains, intrinsically vitiated. And when the prohibition is read in nature itself, it has the universality and firmness of nature itself: wherefore no difficulty excuses from a negative natural law. On the contrary, prohibitions of positive law are tempered by excuses according to the reasonable will of the legislator. This holds concerning divine law itself. Thus the Lord himself approved the deed of David, who, pressed by hunger, ate the loaves of proposition which only priests were permitted to eat [1]. But in the New Testament no prohibition is read which is at once of positive and divine law.

[1] I Reg. 21, 6 [printed: I Reg. 2, 10]; S. Matth. 12, 3.4.

— 2. Law founded on proofs, such as one which divides an inheritance or punishes delinquents, and law founded on presumption or on fiction. Presumption is defined: "a probable conjecture concerning an uncertain matter" (c. 1825, § 1).

Now law can be founded on presumption in two ways:

a) On a presumption of general danger: then the probability of danger moves the legislator to enact a certain universal sanction. Thus, to forestall the general danger of perversion or of spiritual detriment, canonical law forbids evil books or books of a certain subject matter to be read without faculty; civil law, to forestall the general danger of negligence, obliges one guilty of merely civil fault to repair the damage. Cf. d'Annibale, I, 208. By such a law the judgment of danger is withdrawn from subjects. Wherefore from c. 21, a law of this kind is to be urged "even if in a particular case the danger is not present."

b) On a presumption of fact, "when, holding as certain that something was done, because thus it is more commonly wont to happen, from that supposed fact ... law establishes rights and obligations" (d'Annibale, I, 208).

This presumption is *iuris tantum*, if contrary proof is admitted in the external forum; it is *iuris et de iure*, when the judge is forbidden to attend to contrary proof. Thus all laws, both canonical and civil, presume as legitimate a son born of a married woman. But some permit contrary proof, while others forbid "that inquiry be made concerning the father."

Thus "from a celebrated marriage, if the spouses have cohabited together, consummation is presumed, until the contrary is proved" (c. 1015, § 2); while "a thing judged, by a presumption *iuris et de iure*, is held to be true and just, nor can it be directly impugned" (c. 1904, § 1) [1].

Thus far, presumption of law. There is also a presumption of man, "which is conjectured by the judge" (c. 1825, § 1), concerning which the Code of Canon Law establishes this, c. 1828: "Presumptions which are not established by law the judge is not to conjecture except from a certain and determinate fact, which directly coheres with that about which there is controversy."

But, whatever may be the law of the external forum, in the internal forum a presumption of fact yields to the truth. Wherefore if the fact truly did not occur, scandal or a higher motive of observance being excluded, that law does not bind the conscience.

[1] Indirect proof, however, is admitted, that is, against the very fact on which the presumption is founded (c. 1826). Thus you could not demonstrate the error of a definitive sentence, but you could prove the nullity of the sentence.

— Certain laws seem to be founded on fiction. In matter subject to himself, the legislator can, on account of the common good, juridically transfer a disposition beyond the true species of fact on which it regularly rests: for example (which both canonical and civil law effect), to regard as legitimate children whose parents are afterwards joined by a legitimate bond. Therefore fiction is defined as a disposition of law contrary to the truth in a possible matter and from a just cause (Bouquillon, *Theol. fundam.*, n. 162).

Laws of this kind oblige subjects, but neither can they themselves be transferred to cases not expressed, nor can the effects of their assimilation be enlarged.

Nor indeed, however, can fiction found any law or be able to found one, since fiction in itself is nothing. But some reason of the common good, for example equity, moves the legislator (and therefore founds the law) to extend the benefit or effects of the law beyond the merit of the cause. Thus when it is said, "an infirm canon is held as present," in reality this is signified: distributions among those present are granted also to an infirm man who is absent. And mention of fiction is not useful, except insofar as it permits a briefer enunciation of the law. But because that mention at the same time can deceive, not without merit many would wish to give notice of departure to the naming of things as "fictions." Wherefore very well the Code of Canon Law, c. 1117, no longer says: "children legitimated by a subsequent marriage are held by fiction as legitimate," but, omitting the word fiction, directly establishes thus: "Children legitimated by a subsequent marriage, as regards canonical effects, are in all things equated to legitimate children, unless something else has been expressly provided."

— 3. Law merely commanding or prohibiting, and invalidating law. For, besides the efficiency of obligation, not only divine law but also human law, both canonical and civil, so that it may effectively provide for the common good, can render null certain acts which, considered in themselves, would be valid.

This invalidation is sometimes certain, but at other times disputed or doubtful. Thus, by natural law itself, a marriage attempted between parents and children is null; but it is less certain that nuptials between brother and sister are rendered invalid by natural law itself. And when invalidation is certain, this is sometimes disputed, whether the invalidation must be ascribed to divine law or to

human law. Thus, is the impediment of force and fear in marriage constituted by natural law or by human law? Authors dispute the matter.

Moreover natural divine law forbids what it invalidates, while human law, at least civil law, sometimes permits to be done what nevertheless it wills to be juridically ineffective: for example, an informal testament. Consequently, as is evident, the obligation of the law varies.

But several other distinctions occur.

a) A law can invalidate an act most fully, that is, effect that in reality or by full right it be of no value; or only after the sentence of a judge can it hold the act invalid. This sentence sometimes merely declares the nullity, sometimes truly effects it. If the sentence is a mere declaration of nullity, its force is said "to be drawn back," or to act backwards to the very moment at which the act was done, which therefore is reputed to have been null from the first moment; in the other case, the effects produced up to the sentence of the judge remain firm.

Law can take away the natural obligation itself, or merely in the external forum either take away the action, or provide the defendant an exception by which he can repel the plaintiff: this is invalidation improperly so called.

Furthermore a most full invalidation, which by the fact itself takes away the natural obligation itself, cannot be presumed, but must be demonstrated from the words of the law or from the end which otherwise would not be obtained. Cf. d'Annibale, I, 206 (52); Lehmkuhl, I, 315.

Concerning the sentence of a judge, this also must be observed: while in canon law (cf. cc. 1679-1682) an action is directly conceded for obtaining from a judge a declaration of nullity, in the civil forum an action of this kind is generally not had, either because the very appearance of a civil act is lacking, as if you wished to obtain the invalidation of a verbal testament, or because no use is made of the invalid act, so that a present plaintiff does not have an *interesse*. For example, if an heir instituted by an informal testament allows the heir by intestacy to take the inheritance, that legal heir, so long as the other does not vindicate the goods, would in vain seek from a judge a sentence concerning the testament.

b) A law can invalidate an act absolutely, or only in favor of someone, for example of a minor. To him alone then (or to a tutor or to him who can act for him) belongs either an exception for repelling the plaintiff or an action for recovering what he has paid. Thus also often fear can be opposed by the party alone who has suffered the fear.

c) The condition of invalidation can be injury or damage. Hence that common saying, whose force we shall afterwards define more accurately: "A minor is not restored as a minor, but as injured."

Summary

— Divisions of laws. I. From sanction there are moral, penal, and mixed laws.

II. From object, an affirmative law commands an act, and, although it always obliges, nevertheless admits delays and also omissions; a negative law forbids an act, and obliges always and for always. No difficulty excuses from a negative natural law.

III. From its foundation, one law rests upon a demonstrated matter, another upon presumption, or upon fiction itself. Presumption (or conjecture from probable indications) can be of general danger:

this obliges even if, in a particular case, the danger ceases; or presumption of fact: this presumption is either *iuris tantum*, if it admits contrary proof, or *iuris et de iure*, if it excludes such proof. Fiction (or, from a just cause, a disposition contrary to truth in a possible matter) extends the benefit or effects of law beyond the merit of the exterior cause.

IV. From its efficacy, law merely commands or forbids, or also weakens an act: either most fully or (not always by a special action) after the sentence of a judge; whether the natural obligation itself is taken away, or only the civil action (absolutely or in favor of someone).

Chapter V: The Interpretation of Law

— I. Notion. Divisions. - 1. The interpretation of law is the explanation of the sense contained in the law.

Taken strictly, it supposes a doubtful and obscure sense, and differs from declaration, which is the verbal exposition even of a clear law.

2. a) In respect of the author: authentic is that which is made by the legislator or by him to whom he has committed this, and it obliges at least those to whom it has been given and imposed. It is made not only by law, by the legislator, but also by way of sentence, by any competent tribunal, in the cases which it decides, and by way of rescript, in a particular matter, for example by a Sacred Roman Congregation.

Doctrinal is that which is made by experts.

Usual is that which is made by custom, concerning which, c. 29: "Custom is the best interpreter of laws."

b) In respect of the source from which light is sought, the mind or soul of the law is gathered either from the words or from other circumstances. The words must be approached first, and they must be taken according to the usual sense (not the philological sense) and the sense received in the court. If, however, the mind is clear from elsewhere (from circumstances, end, etc.), the words must be left for the mind. The reason of the law, unless the Prince himself has manifested it as adequate by an act sufficiently public, makes interpretation dangerous, especially since the law is contained not by the reason itself but by the words in which it was conceived (Cf. d'Annibale 1, 186). And because the reason of the law is not the law, unless the reasonable will of the legislator requires it, it is not to be transferred from one case to another on account of similarity. Yet that enlargement can be required by the correlation of cases: what is established concerning the bridegroom of itself holds concerning the bride; by juridical assimilation: thus canonical law equates election and postulation; by connection and virtual comprehension: the faculty of making a testament contains the faculty of leaving a legacy.

To avoid fallacies, these things today must be well attended to: the mind of the law must be known, not the mind of the man who is the legislator. Wherefore the mind of the law, or of the legislator as such, is not the mind or intention which the legislator manifests privately or after the law has been made, but not by a legislative act; nor the mind of the individuals who establish the law collegially; nor the mind of those who prepared or wrote the law. For example, when there is question of the Code of Canon Law, the mind of the legislator is the mind of the Pontiff promulgating it, not of the Commission by which it was laboriously produced. From this, however, aids can be brought for detecting the mind of the law. For example, the mind which the acts of the commission manifest can be presumed to be the same as the mind of the Pontiff who approved the work of the commission.

d) In respect of the kind of interpretation, one law is to be interpreted broadly, another strictly. Indeed no law can be taken so broadly that it is extended beyond both the natural and the juridical sense of the words; nor is it to be interpreted more strictly than the justice of the law and the propriety of the words bear, together with the reason of the law, which also must be preserved. But

when, with the propriety of the words preserved, the words can be taken in a twofold use, the broader use produces a broad interpretation, the restricted use a strict interpretation. The word, for example, *cleric* can comprehend or exclude religious and bishops. In favorable matters, where there is place for broad interpretation, by the name cleric we shall understand religious and bishops also, but not in odious and onerous matters: these require strict interpretation. "Odious things ought to be restricted and favors enlarged [1]."

Which law is to be judged favorable, which odious, must first be drawn from the matter itself. Hence, c. 19: "Laws which establish a penalty, or restrict the free exercise of rights, or contain an exception from the law [2], are subject to strict interpretation." And more generally we shall say that laws which immediately impose a burden are to be interpreted strictly, but those which grant a faculty or power, broadly. It can easily happen that there is room for doubt. Thus c. 522, concerning the confessor whom religious women can approach, is interpreted broadly by some, strictly by others. Indeed a law is sometimes favorable in one part, odious in another. Then, if the favor and odium can be separated, there will be place for both interpretations at the same time. Thus the law (which, before the Code, was called the privilege of the canon) by which ecclesiastical persons are protected from personal injuries by a penal sanction is favorable insofar as it protects the persons, odious insofar as it inflicts penalties. Therefore we shall understand broadly the persons protected; strictly, the penalties inflicted. If the odious part cannot be separated from the favorable, the direct intention of the legislator is to be observed: for instance, a concession of a pension by which another's revenues are burdened, which is to be taken broadly. Cf. Palmieri, *Op. th.* I, tr. 3, n. 68.

But what the Prince has conceded, besides law, from liberality, is to be interpreted most broadly. For it is fitting and contributes to the common good that the Prince be esteemed as inclined to benign liberality.

e) By an allied but proper division of authentic interpretation, interpretation is distinguished as comprehensive, extensive, restrictive. The first renders the true sense of the law: private persons can make this alone; the second carries the law over to a case not previously comprehended, as when what had been established concerning those truly absolving an accomplice was transferred to those fictitiously absolving an accomplice; the third exempts from the law cases which the reasonable understanding of the law comprehended: as when, c. 542, the words "who have adhered to a non-Catholic sect" are said to be understood only of those who have receded from the Catholic faith and then given their name to a non-Catholic sect (Cf. response 7, October 16, 1919, of the Commission for the interpretation of the Code, A.A.S. 1919, t. 11, p. 477. *Per.* X, p. 101).

[1] Reg. 15 of Law in VI.

[2] Which law here is to be said to contain an exception from the law is not of very convenient explanation. But the matter belongs to jurists.

— Must an authentic interpretation be promulgated? From the very nature of the matter, an extensive or contractive interpretation must be intimated or promulgated in order to oblige. For it contains a true change of law. But if it has been comprehensive, yet dissipates a true obscurity, some, attending only to natural law, deny the necessity of promulgation, which others affirm. The former argue that here there is no question of a new law, but of an old one which, according to its true sense, had already been promulgated [1]. Others, on the contrary, say that a truly doubtful law is none,

and therefore, when it is authentically explained, it needs a new promulgation. Thus Wernz, *Ius Decret.*, I, n. 127. The positive law c. 17 § 2 agrees with this.

[1] Palm., *Op. theol.* I, tr. 3, n. 465.

— On epikeia. Epikeia is called that interpretation of law by which, contrary to even the clear words of the law, but according to the mind of the legislator, some case is prudently exempted from the disposition of the law. For since law disposes according to that which happens for the most part, in a particular case it can fail, indeed become harmful: which the legislator is reasonably judged not to have willed. Cf. Palmieri, *Op. theol.*, I, tr. 3, n. 469-471.

There is, however, place for epikeia if, in a particular case:

a) The law, understood otherwise, would become inequitable or more grave than is just;

b) If, the usual interpretation being attended to, the legislator is prudently conjectured not to have wished to oblige in such a case. An example of the former cause will be if a heretic whom you are trying to lead to the faith offers you, from a proscribed book, a difficulty to be read and solved at once: it will be lawful to read the passage by epikeia. The latter cause occurs especially in lighter matters, for example in the observance of the rule of silence.

But in natural law, since it is placed in right reason, since it forbids things which are intrinsically illicit, and confirms an order indispensable for men even in a particular case, there is no place for epikeia properly so called. Cf. Suarez, *De Legibus*, L. 2, c. 16, n. 9 and 10.

Summary

— The interpretation of law, or explanation of the sense contained in the law, is not merely verbal declaration.

Authentic interpretation is made by competent authority, whether by law, or by sentence, or by rescript: at least those are obliged to whom the interpretation has been given and imposed.

Usual interpretation is made by custom.

Doctrinal interpretation is made by experts. These must first gather the mind of the legislator, as such, from the words of the law, then from other circumstances, but prudently from the reason of the law.

In respect of the kind of interpretation, it can be broad or strict. Laws which immediately grant a faculty or power are to be taken broadly; laws which immediately impose a burden, strictly; laws which contain a liberal benefit of the prince, most broadly.

Authentic interpretation is distinguished as comprehensive, according to the true sense of the law; extensive, which enlarges the law; restrictive, which diminishes the force of the law. These two latter are to be promulgated. It is disputed whether or not a comprehensive interpretation, if it explains a law objectively obscure, of itself needs promulgation.

Epikeia is an interpretation contrary to the words of the law but consonant with its mind, by which certain cases are prudently exempted, because otherwise the law would become inequitable or too severe. The reason of epikeia is not a defect of the law, but its nature, which can provide only for cases as they happen for the most part. In natural law there is no place for epikeia.

Chapter VI: The Author of Law

— It is manifest first that to him who has set forth the end and is master of those who are to be ordered to the end belongs the very ordination to the end, so that he is, before all others, legislator. Then, subordinately to him, the ordination belongs to him who must attain the end. Wherefore in a more universal way that holds which St. Thomas seems to have said concerning human power alone: "To order to the end belongs to him to whom that end is proper" [1].

The end of the whole universe is God. Therefore God himself is demonstrated to be the first Legislator, before whom there is none; supreme, against whom no one can do anything legitimately or validly; universal, from whose command nothing is withdrawn.

Legislators next are those who preside over a community or social multitude.

These are said to represent the multitude, at least in this respect, insofar as they act for it and on account of its good. For the multitude to which the end belongs cannot, as such, act or ordain: as such, it is to be ruled and ordered, so that provision must be made for it by persons distinct from it.

The authority necessary for making an ordination is communicated by God, whether by the very will by which he wills human societies to exist - that is, by the will of the Author of nature [2] - or by positive will, by which in the Old Testament he constituted Moses, Judges, Kings; by which in the New Testament he constituted the Church and handed her over to be ruled by Peter and his successors.

Observe that not even in the most perfect democracy can the making of laws belong to the multitude as such. For even where recourse is had to the so-called universal suffrage, however many members of the multitude are kept from sharing in suffrages because of incapacities, whether natural, under which children and the insane labor, or legal, of age, sex, improbity, they have no part in making laws; and matters are decided by some determinate plurality (therefore not by all).

The legislative power itself is delegable; and everywhere, from the supreme authority, by some definite manner of communication or delegation, it passes to others.

[1] In 1, 2, q. 90 art. 3 c. Cf. the commentary of Cajetan.

[2] But we omit the question concerning the first subject in which civil authority itself inheres.

— There are true human laws. If every legislative power proceeds from God, if of itself it inheres in God alone, therefore this power does not belong univocally to the other legislators and to God; and for a certain true reason God can be praised as the sole legislator, just as he is celebrated by the Church in the chant "Glory in the highest" as the sole Lord.

Nevertheless, because true power of commanding is conferred by God upon men, and there are many things which he himself permits to be ordered and defined by men, laws, from the author from whom they proceed, are truly some divine, others human.

There have been those who would deny to men the true power of causing law, who then would merely posit a condition, on which being posited, an obligation would arise from divine law, so that every right would be divine, either absolutely or conditionately. But a condition, which is sometimes

necessary so that a cause may operate, does not assimilate the effect to itself as positive laws made by human authority are assimilated to the will of the human legislator, whether as to that which is commanded, or as to the force by which it is commanded, or as to the time through which it is commanded [1].

[1] Cf., for example, Schiffini, *Principia*, n. 608, where he distinguishes cause from condition by this, that condition influences nothing, so that, with an equivalent condition substituted, the causality can remain the same in number.

— Jurisdiction. Furthermore the power of making laws belongs to the power of a more universal character which is called jurisdiction. This is the power of ruling a multitude, or of directing it efficaciously, both through laws and through precepts, judgments, and penalties. And in truth, in all these ways, right is declared, that is, in a general or particular way there is established that which can be demanded under the title of some justice.

— Laws of one commanding illegitimately. Of themselves, laws and sentences ought to be brought forth by legitimate authority. Yet those brought forth also by usurpers will oblige, if these possess the realm peacefully and are tolerated by the commonwealth. The reason is the very necessity of the common good, which requires that the community be able to be efficaciously directed to its end by him who has care of it. The legitimate Prince is judged to have ratified this, or God himself supplies his consent.

Indeed by positive compact, before the most recent war, it had been sanctioned that an invader of territory could issue decrees which, while he occupies the region precariously, would seem necessary for preserving peace.

But beyond that necessity and the reason of his own security he cannot command. The facts themselves clearly demonstrate that abuses can easily be committed in this matter.

Summary

— In some true sense, God is the sole Legislator. Dependently upon him, by communicated power, human legislators are also true legislators: these represent the multitude, at least insofar as they act for it. Their will is a true cause of obligation, not a mere condition.

Legislative power is part of the power of jurisdiction, that is, of the power of efficaciously directing a subject community to its end through laws, judgments, and penalties.

Because of the necessity of the commonwealth, the commands of a usurper can also be efficacious, whether from the consent of the legitimate Prince or from God himself.

Chapter VII: The Subject of Law

— All those are obliged by law for whom it has been justly made. A transgression committed by them is, objectively, a material injury of the right order. Yet only those who are actually masters of reason can actually sin against law. By others, however, law can be violated in them, in the manner which will be explained later.

Here the question is only concerning the Author of law himself.

— God, the Best and Greatest, is not properly bound by his laws: since he is outside and above the world of creatures, he is not part of the community for which laws have been made.

The human legislator is part of the community over which he presides. Yet by the coercive force of his law, if we suppose the Prince absolute or endowed with full power, he cannot be coerced: no one coerces himself. But from natural law itself, which sanctions this right order, that the part agree with the whole and the head with the members, he is constrained to observe his own law, insofar as, attention being given to the universality or reason of the law, the law is applicable to him [1].

And from the same motive by which the law obliges the others, that natural law seems to urge him. Yet the obligation is not judged grave of itself.

Today, however, in civil society, the matter is scarcely practical. For the legislator is not one person, but laws are proposed by the consent of many, who, taken separately, are subjects of the law, so that the consent itself in some manner can be called the legislator. Yet it happens that some immunity from personal coercion is conceded to the Prince: which immunity is called his personal inviolability.

[1] Cf. 1, 2, q. 96 art. 5 ad 3.

Summary

— All are obliged by law for whom the law has been made. God, since he is outside the community, is not obliged by his law; but the human legislator is obliged, not as to coercive force, if he is an absolute king, but as to directive force, from the natural law itself urging the obligation of the law, though not of itself under grave matter. Today often nothing remains to the Prince except personal inviolability.

Chapter VIII: The Observance of Law

— Principle. "Laws command the substance of the act, not the mode, unless the mode is of its intrinsic nature according to itself, or as it falls under the law" [1]. What the law imposes, this is to be furnished, and that reasonably, yet by understanding it strictly [2]. From this principle the following rules are gathered, which hold also concerning particular precepts and obligations freely undertaken, for example by vow: once the fact is posited, they are to be observed as quasi particular laws.

[1] Sanchez, *In Decal.* l. 1, c. 14, n. 1, adducing St. Thomas, 1, 2, q. 100 art. 9 and 10.

[2] Lehmkuhl, I, 244.

— The state of grace, which is required for merit, of itself is not necessary for fulfilling precepts. Wherefore one who, in the state of sin, has heard Mass, recited the breviary, executed a vow or sacramental penance, has done the work owed and is freed from the obligation. Yet one conscious of the state of sin cannot satisfy the precept of paschal communion, because his communion would be sacrilegious; and therefore the commanded work itself would be vitiated according to its species. Innocent XI, March 2, 1679, condemned this 55th proposition: "The precept of annual communion is satisfied by a sacrilegious eating of the Lord" (Denz., 1205).

— Provided that the very commanded work, good from its object, is furnished, the law can be fulfilled by a sinful act itself.

Thus one satisfies the precept of hearing Mass who goes to church to hear Mass, and at the same time has an evil will of stealing, of seeing things which excite concupiscence, etc. Yet the precept of annual confession is not satisfied by a sacrilegious confession; for this is voluntarily null, so that the sacrament is not received. Wherefore this 14th proposition was reproved by Alexander VII, September 24, 1665: "He who makes a voluntarily null confession satisfies the precept of the Church" (Denz., 1114).

— The end of the law does not fall under the law. Therefore he satisfies the precept who fulfills the precept for an end diverse from that which the legislator intended. Indeed the end can be in some measure opposed, provided the substance of the work is preserved. Thus one does not fail in the precept of abstinence who has eaten fish from gluttony. The law therefore is not deprived of its common utility.

The same holds concerning precepts. Yet except the case if the intention itself is commanded. But generally the intention on account of which prayers are imposed by a confessor is only an accidental mode, the omission of which does not impede substantial fulfillment.

— The intention of fulfilling the precept reduplicatively is not commanded by law. Wherefore he satisfies the precept of hearing Mass who has heard Mass: a) without the intention of fulfilling the precept; b) not knowing that on that day there is an obligation of hearing Mass; c) positively not wishing by the Mass which he hears to satisfy the precept. Yet a contrary prevailing will will be efficacious where the obligation remains from vow. For when obligations draw their origin from the will of the one promising, he can freely remain in the obligation, just as from the beginning he freely

constituted himself a debtor. Similar is the case of him who pays Titius the hundred coins promised, saying: I give these to you from a liberal mind, not yet as promised.

But the intention or will which the substance of the act requires must be had so that the precept may be fulfilled. Wherefore he who, without the will of praying but with the sole will of reading things curious or beautiful, recites the breviary; he who goes to the sacred rite solely to hear music; he who, compelled by fear, assists at the sacred rite, yet unwilling to perform the pious work, does not satisfy the precept.

But a prohibiting or negative law, by the very omission of the prohibited act, even if not voluntary, is sufficiently fulfilled so that there is no sin against that law. He, however, who has borne a positively opposed will will have sinned by an internal act. Suppose someone who is physically forced to observe a fast which he had intended to break.

And the same must be said concerning laws or precepts which require the thing, but in no way a personal action. Thus the law of paying taxes can be fulfilled through anyone.

Between divine and human law, however, there is this difference: that the state of sin removes merit, and that an evil intention, a sinful action, always is opposed to some divine precept. But the intention escapes the human legislator. Cf. St. Thomas, 1, 2, q. 100 art. 9, 10.

— At the same time, by diverse acts, a twofold precept can be satisfied, provided one does not impede the other, nor diversity of times has been commanded. Wherefore he who hears the Mass commanded on a feast day can at the same time recite the canonical hours or pour forth other prayers imposed by vow or as penance. And he who by one vow or by various vows promised the hearing of Mass and several prayers is not forbidden at the same time to hear Mass and recite prayers.

When Masses are celebrated at the same time on several altars, provided the consecrations take place at distinct moments, those assisting, if they have wished, truly hear several Masses. Yet not rarely an imposed obligation of hearing several Masses must reasonably be understood of Masses to be heard at distinct times, as if a confessor should order someone to be present twice or three times at the sacred rite. For it is one thing to be present twice at the sacred rite, another thing to be present once at several sacred rites.

— By one act diverse precepts can be fulfilled at the same time, unless something else is gathered from the mind of the one commanding. Thus use itself demonstrates that a beneficed priest, by one recitation of the breviary, satisfies the twofold title by which he must recite the canonical hours; and that the faithful are held to hear only one sacred rite when a feast day falls on Sunday.

Nevertheless, according to the mind of the one vowing and of the confessor, things which are promised by vow and imposed as penance generally cannot be fulfilled by an act already owed on another ground.

Yet it sometimes happens that confessors impose a work already commanded. And if the vow is concerning a thing to be furnished daily or on a certain recurring day (for instance, a fast on each Friday or Saturday), its reasonable interpretation has this, that when an obligation of the same thing but of another title concurs, the work is not to be repeated. Thus one who is bound by vow to a daily rosary, on a day on which he has to recite the rosary on account of an imposed sacramental satisfaction, will not have to recite two rosaries; nor (what is more manifest) is he held to a second

fast if on some Friday a commanded fast occurs. And nothing prevents you from satisfying a private vow or sacramental penance by the same work and gaining an indulgence.

— In what order satisfaction is made for several obligations of the same kind. You ask in what order you satisfy the various titles by which you must repeat the same work in species: for instance, celebrate several Masses.

You satisfy: 1. In the order which you have expressly established.

2. If you have wished to satisfy all the obligations at the same time, and the work or its application can be divided, you satisfy each for its proportionate part. Thus several intentions of Mass can be joined, so that one who must celebrate individual Masses for three deceased persons can either assign individual Masses to each, or offer Mass three times for the three collectively. Yet this must be noted, that the indulgence of a privileged altar can be applied to only one deceased person from the several for whom you offer Mass.

But what if you have wished to satisfy all the obligations at the same time and the matter cannot be divided? Titius must approach confession once from vow, once from sacramental penance. By one act he wished to satisfy each obligation; which he could not do. Which obligation did he satisfy, or perhaps neither, so that he is held by the twofold obligation as before? Ballerini-Palmieri answer that satisfaction was made by Titius for the more urgent obligation or the graver one (if they urge equally) [1], "from the common principle of law, that a work which is not valid as it is done, is valid at least in that better mode in which it can be valid." But Sanchez (2) thinks that the law of the Church is to be placed before a vow, and a vow before penance.

3. If you have established no order, you will be judged to have fulfilled the more urgent obligation. Ballerini-Palmieri (l. c.) also transfer this to the case in which you have not thought about the obligation. But that rule must be used prudently. It is always supposed that the whole has been done which had to be done. He who merely must celebrate Mass, by every celebration of Mass, even unconscious of the obligation, will fulfill the debt also; but if, besides celebration, application also is required to a definite intention, the Mass will not thus be applied unless either in the celebration itself or beforehand he has formally willed the application.

[1] T. I, tr. 3, c. 3, n. 381. - (2) *In Decal.* l. 1, c. 14, n. 8.

— Concerning the due time. An obligation must be fulfilled in its own time. Therefore:

1. If no day has been fixed, it will have to be fulfilled within the time through which opportunity is given, unless by accident the matter is urgent, or the matter is diminished by delay: as if you delay too much entrance into religion.
2. It is not to be fulfilled before the time, even if you foresee an impediment during the time of the obligation. Thus one who on the next day will be impeded ought not to anticipate Matins on the day before. Indeed this could not always be done usefully. Thus by hearing Mass on the day before, the precept of sanctifying Sunday has not been satisfied. Yet where there has been an obligation of justice, of itself he who foresees that afterwards he will be unable to pay will

have to pay before the day: because he must positively prevent that damage to the creditor. Cf. d'Annibale, I, 167.

3. While useful time is running, it must be fulfilled. If through a part of that time you foresee a future impediment, you will have to forestall that impediment by satisfying the law. Wherefore on Palm Sunday he will have to approach the holy table for whom afterwards, during the paschal time for communion, opportunity seems about to be lacking.

4. When the prefixed time has elapsed, the obligation ceases, if the day has been appended for ending the obligation. On the contrary, it urges if it was prescribed for pressing the obligation. To discern this, the words, the end, and the circumstances of the law will have to be observed; and often the usual interpretation will give more certain knowledge. Thus, when the day has elapsed, the ecclesiastical obligation of hearing the sacred rite, of reciting the breviary, of fasting, ceases; but the obligation of annual confession and communion does not cease.

5. What is commanded to be done at once, at least in canonical law, is understood moderately, that it must be done within three days. What is ordered to be done as soon as possible can of itself be deferred more. How long: this is less clear. It is in the estimation of a good man (d'Annibale, I, 167).

— What if you cannot do the whole? Of itself the whole which is commanded must be furnished. One who cannot do the whole is held to the part, if the matter is divisible, and the part for which opportunity is had is of sufficient moment and utility. Often it is difficult to define which obligations are to be considered divisible and which not. Cf. d'Annibale, I, 168 (42). Here also the usual interpretation will often have to be consulted, for example concerning the obligation of him who can recite only part of the breviary, or hear only part of Mass.

Summary

— Laws impose the substance of the act, not the mode, unless it is of the nature of the act, or the mode is expressly commanded. Wherefore observance does not require the state of grace, nor is it impeded by a sinful act; it does not require the intention of the end of the law, but it does require an intention sufficient for a human act and for the substance of the act, unless it is a prohibiting law, which is observed by the very omission, or it requires the thing, not a personal action.

It is not repugnant of itself that by diverse acts, which do not mutually impede one another, several precepts be satisfied at the same time, or that by one act diverse precepts be fulfilled. If a work must be repeated under diverse titles, satisfaction is made for the various obligations in the order which has expressly been established, unless you have preferred, when the matter can be divided, to satisfy several at once, according to proportion. If the matter cannot be divided, the debtor has satisfied the more urgent obligation; this must also be said if he expressly established no order, provided, however, that he had a positive intention of satisfying. An obligation can and must be fulfilled during the whole useful time; but not before the time, unless it has been an obligation of justice; nor after the time has elapsed, unless the day has been appended for urging the obligation.

What is to be done at once, at least in canonical law, is understood moderately within the space of three days. What must be done as soon as possible of itself allows a greater option, to be estimated by the judgment of a good man.

The whole which is commanded must be furnished. Let one who cannot furnish the whole furnish the divisible part of sufficient utility.

Chapter IX: Cessation of Law or of Obligation

Order of treatment. - Freedom from obligation can be obtained both by suppressing the law itself and by relaxing its bond. But a law can cease extrinsically because of a new law, or intrinsically because it has become harmful or useless. But the bond of obligation can be removed when subjection has been taken away, or when an impediment has arisen, or when a dispensation has been granted. Therefore we must speak in order concerning both reasons of freedom and the various members or parts of each reason.

§ 1. On The Direct Cessation Of Law

— I. Because of a new law. A law is taken away by a new law which expressly revokes the prior law in whole or in part, or is contrary to it, because it sanctions things which cannot be composed with the prior law, or because it orders anew the whole matter of the prior law from the beginning (c. 22).

The first suppression is formal, the second and third are virtual. The reason of the third is this, because it is adverse to the common good that the same subject matter be under a twofold ordering.

The complete revocation of a law is called abrogation; derogation is called its partial revocation; obrogation, finally, the introduction of a contrary law.

Since a law is presumed useful to the common good, its cessation is judged odious. Wherefore rights are rather to be harmonized than opposed.

Therefore a general law indeed obrogates a general law because of contrariety, but not a special law of places or persons, unless something else is expressly provided in the new law. (Cf. c. 22).

— II. When the end ceases. A law also ceases if its end ceases contrarily, that is, if the law has become harmful, unreasonable; indeed if for the community the end has adequately vanished, so that the law has commonly become useless. This uselessness can occur only in indifferent matter. But indifferent matter, as such, the legislator cannot command: the law would no longer be an ordination to the common good. Cf. 1, 2, q. 109 art. 4 ad 3; Suarez, *Leg*. 6, 9, 6. Suppose that, on account of public security from disease, assemblies are prohibited: when the plague ceases, the prohibition itself will cease.

What if not commonly, but in the case of a particular person, the end of the law has ceased negatively, that is, it has become useless? The particular act always preserves the honesty of the thing commanded. To permit an exception is to give place to much hallucination. Wherefore the common good itself seems to stand against that exception. Therefore, with the more common opinion, for example Suarez, l. c.; Laymann, *De legib*. (I, 4) 21, 3; Lehmkuhl, I, 276, 277; it must be said that the law does not cease because of particular uselessness.

Nevertheless, where scandal has been absent and uselessness is clearly certain, with St. Alphonsus, I, 199, the use of the more benign opinion can be tolerated.

But this can no longer be transferred to canonical laws which are said to be founded on a presumption of danger, since we have the contrary expressly promulgated in canon 21.

§ 2. On The Dissolution Of The Bond Of Law

I. Subjection Removed

— In what way subjection ceases. Since a law obliges only the subjects for whom it has been made, when subjection has been removed, it is manifest that the obligation itself ceases. But subjection is taken away both by a changed quality or condition of the person which is supposed by the law, and by privilege.

A. On Changed Condition

— On account of the changed condition which is supposed, a territorial law does not oblige even a subject outside the territory; a law made for laymen no longer obliges him who becomes a cleric; nor, on the contrary, does a law proper to clerics now oblige a cleric who has been reduced to the lay state. Cf. cc. 136 § 3; 141 § 2; 211; 213; 214; 648; 2305 § 1; 2358; 2387; and note, c. 213, the exception made for the obligation of celibacy which clerics in sacred orders have contracted.

And because a law of itself obliges no one to remain a subject, he who has made himself immune will never sin against the laws from which he is exempted. Although he could have sinned against another law, as if the immunity follows a penalty because of a delict, or if someone has illicitly changed his state.

B. On Privilege (1)

— I. Notion. Privilege etymologically means a private law, and is customarily described: A private right granted to certain persons. This right is generally understood as favorable to him to whom it is granted. More accurately, privilege will be called a particular and non-necessary right granted with a benevolent intention to certain persons, whether taken individually or commonly.

We say non-necessary, in order to distinguish privilege from laws, certainly particular, which order the state, office, etc., of several persons.

Therefore the various laws which suitably regulate religious life are not privileges; what is bestowed upon religious beyond that ordering, such as exemption from diocesan jurisdiction, faculties of regular confessors: these are privileges. And because right is understood as favorable, the various incapacities which affect a secularized religious are not privileges.

[1] Cf. the learned articles of the illustrious Louvain professor, A. Van Hove, in *Nouvelle Revue Theologique*, 1922, January and following, *De la notion du privilege*.

— II. Divisions. 1. From relation to existing laws, privilege is distinguished as privilege beyond the law and privilege contrary to the law. Beyond the law is that which, if it is granted by no common law, is nevertheless prohibited by none: thus various faculties or powers granted to persons not incapable by common law of having them. By a privilege contrary to the law someone is withdrawn from a law by which otherwise he would be bound. Therefore a privilege contrary to the law at once supposes and takes away subjection to the law. Insofar as it supposes subjection to the law, a privilege contrary to the law is granted only to subjects; insofar as it takes away subjection, at least if it was given for private advantage, it requires strict interpretation (Cf. c. 68, coll. with c. 50, and what will soon be said concerning interpretation).

Are there privileges according to law? If the matter is considered, they cannot be, since they would give what the law itself concedes. But if the form is considered, or the title by which something is had, nothing prevents a title of having certain things from being granted independently of the common law and firmer than the law itself, so that, the law having been suppressed, the concession remains because of the subsisting title.

This distinction is greatly to be attended to, for example in the constitutions of religious which materially refer to the common law of religious. When the common law has been changed, the constitutions themselves will be changed, if the dispositions inserted in them are merely as of common law; on the contrary, they will remain of themselves, if they effected a peculiar right or proper right of the institute.

2. From motive, privilege is distinguished as gracious, which proceeds from mere liberality; remunerative, which proceeds from gratitude for merits; onerous, which has been granted by way of a pact with a certain mutual promise. That a remunerative privilege must of itself be understood more benignly than one merely gracious is clear; but by the quality of an onerous privilege the firmness rather than the interpretation of the privilege is affected.
3. From title of acquisition, privileges are acquired either by direct concession, which title is plainer and more certain, or by communication, or by legitimate custom, or by prescription itself.

Furthermore direct concession can be made either by law, or by particular indult, and that either at the instance of a party or *motu proprio*. This latter, since it shows the inclination of the Legislator, must be understood more benignly. That which has been conceded by indult is more strictly a privilege.

When the form of law is observed, it is more certain that the author of the privilege is moved by the intention of the common good, which intention requires a more benign interpretation. Privileges conceded by general law are also said to be contained in the Body of Law or in the Code, since the Code must contain all general laws, of themselves perpetual.

Privileges of this kind pertain to the universal ordering of society. And to these same privileges both the norms of privileges and the norms of laws, in favorable matters, must be applied; so that, if both norms cannot be composed at the same time, the norms of laws must prevail [1].

A privilege which is conceded by law is never contrary to law, simply as such, although it can be contrary to common law.

By a not dissimilar reason, the canons concerning custom are also to be applied to privileges which are acquired by custom.

By prescription, however, no new juridical norm is established, but only a subjective right is bestowed, for example jurisdiction. Wherefore a privilege so obtained is a privilege only analogically.

Communication of privilege means a concession made after the likeness of a privilege conceded to another person. A privilege conceded after the likeness takes its interpretation from the directly conceded privilege which it imitates; nevertheless it can subsist independently of the former, so that

it is not affected by the revocation or change of the former privilege. The letters of concession must be consulted.

[1] A privilege which has become common by accretions of the rights of those privileged must be distinguished from a privilege which was immediately conceded by common law. The first does not cease when the common law is taken away; while the other follows the fortunes of the common law.

— Communication of privileges. This quasi repetition of a privilege can be conceded by a particular disposition, or can flow from a general law, which generally and in advance makes all the privileges of some person or Institute common with other persons and Institutes. This is more properly called communication of privileges, which itself is twofold: one principal, the other accessory (c. 65). Communication conceded in principal form bestows upon the privilege thus acquired a subsistence independent of the former concession; while a privilege communicated in accessory form participates in the vicissitudes or fortunes of the direct or principal concession. Thus formerly, but not today (cf. c. 613), the privileges of one regular Order were communicated with very many other regular Orders in principal form; while secular Third Orders participate in the privileges of the first and second Order in accessory form. But every communication, from the nature itself of the matter, must be contracted to those privileges which had been conceded without special relation to a certain place or thing or person, and which do not surpass the capacity of the subject. Wherefore, for example, privileges conceded to some sanctuary because of antiquity or possession of a miraculous icon will have to be excluded even from a general communication; nor can laymen acquire clerical privileges by communication. But from the positive disposition of c. 64, privileges conceded for a time, or those which were acquired by the one with whom communication is conceded not directly but by communication, are not contained in general communication.

Custom, since it can take away a law, is also valid for conferring the right of some immunity or exemption.

By prescription, goods and rights, and jurisdiction itself, can be acquired, so that prescription is numbered analogically among the sources of privilege.

— 4. From the subject, privilege is distinguished as real, which reaches physical persons through their relation to a moral person (a community) or to a thing: a dignity, place or territory, house [1]; and personal, which immediately benefits persons. A privilege of a pious cause, granted to pious places, to a religion, or to other moral subjects, is counted rather among personal privileges.

5. From the immediate effect, privilege is distinguished as merely favorable, which is harmful or onerous to no person or law, and odious, which, while it favors one, imposes a burden or encumbrance upon another or is opposed to a more common right.

[1] Thus in the city of Pilsen, joined to the possession of certain houses is an "action" or title of association with the greatest factory of beer.

— III. Concerning the interpretation of privilege, these things must be observed.

1. "A privilege must be estimated from its own tenor, nor is it lawful to extend or restrict it" (c. 67). And "that interpretation must always be used, so that those increased by the privilege may appear to have obtained some favor from the indulgence of the one granting" (c. 68).

2. In doubt, a privilege which injures rights acquired by others, or for the advantage of private persons is opposed to law [2], or has been obtained for the attainment of an ecclesiastical benefice, must be interpreted strictly; all others broadly. Cf. c. 68, compared with c. 50. The reason is because a privilege of itself arises from the beneficent will of the Superior.

And causes are of greater breadth: the motive, if the privilege is remunerative; the mode, if it has been conceded by law or *motu proprio*; the subject, if it is real, or granted to a pious cause, a pious place, a religion.

[2] Privileges conceded by law, however, will have to be interpreted like the laws themselves.

— IV. The use of a privilege is of itself free. Yet it happens that a community, from an obtained privilege, establishes a norm obliging its members: thus, as to the breviary, proper offices of the religion are recited by religious from a privilege whose use is necessary for them; and a free option, which for example can be left to a religion for votive offices, is not always permitted to individual religious.

We must also use privileges whose very use relates to the common good of the society or class to which we belong: thus clerics must, as far as possible, oppose clerical privileges to one violating them, so that they may preserve them intact.

And even the use of a personal privilege becomes necessary by accident from some virtue. Thus, after hearing a confession, a confessor will have to use his faculty in reserved cases by a certain tacit compact by which, like a physician, he promised to the sick man or penitent the full treatment of which he has supply. (Genicot, 1, 147). To the point is the Code, c. 69: "No one is compelled to use a privilege granted solely in his own favor, unless an obligation arises from another head."

— Privileges cease: when the day arrives up to which they were granted; when the person has been extinguished or the thing to which they adhere has been absolutely suppressed; by renunciation legitimately made and accepted by the competent Superior; by express or tacit revocation: for example by a contrary law made by the Superior of him who conceded the privilege; by liberative prescription of him to whom the privilege is onerous (Cf. cc. 60, 71-78).

On these causes and on revocatory clauses jurists must be approached. Let these things be enough for us. It is not lawful for private persons to renounce real privileges or privileges conceded to a community. Nor can a community renounce a privilege given by way of law, or if the renunciation yields to the prejudice of the Church or of others (c. 72 § 4). Tacit renunciation can be by non-use, if there is question of a privilege which is onerous to another. Otherwise non-use, as such, does not take away privilege, nor abuse. But the competent authority can deprive one abusing privilege of it as a penalty, just as it can take away privileges which, as the years pass, it has judged have become unsuitable.

§ 3. On An Impediment That Has Arisen

On account of various impediments which stand in the way of the execution of law, the bond of obligation is not rarely relaxed for the subjects themselves. For law must be possible and human. But we distinguish three kinds of impediments: ignorance, impotence, inconvenience or difficulty.

— I. Invincible ignorance takes away every sin of violated law; vincible ignorance does not do likewise. Yet the legislator can temper his law in such a way that those themselves who are vincibly ignorant are excused; and he can also, on account of the common good, extend certain effects of the law to the ignorant: for example, declare null acts done in the best faith against an unknown invalidating law.

— II. Impotence, even that to which you have given cause with sin, certainly excuses from observing the law: No one can be obliged to the impossible [1]. Suppose someone who has dissipated goods without which he cannot satisfy his creditors. He will indeed have to destroy the sin, so that he may obtain pardon; but, while the impotence lasts, he will be excused from paying the debt.

[1] Reg. 6 of Law in VI.

— III. What concerning inconvenience? A negative law of natural right being set aside, a certain moral impotence is generally judged to be present if, in order to satisfy the law, a grave inconvenience would have to be sustained which is joined accidentally with its observance. The reason is divine benignity, if there is question of divine law; but if there is question of human law, this of itself cannot command things too difficult, for that would be adverse to the common good.

But the grave inconvenience which excuses must appear even when attention is given to the reason of the common good which founds the law. Therefore in individual laws this comparison must prudently be made between the gravity of the inconvenience and the public utility or necessity of the observed law. Generally a graver excuse is required for infringing a negative law than a positive one.

But an inconvenience is required which is accidentally joined with the observance of the law; for an inconvenience joined of itself with the law, from the clear will of the legislator, must be borne. Think of the inconvenience of making an integral confession.

Moreover, an inconvenience must be excluded which was tacitly accepted together with an office. Thus a parish priest or parochial vicar cannot allege the inconveniences of celebrating Mass later or of mixing it with sermons for not observing, before Mass, the law of the eucharistic fast.

— You ask whether or not law obliges with danger to life?

The response must be drawn from the necessity of the common good or of a connected negative precept of natural right.

If the observance even of a human law is of interest for preserving the common good or for averting a common evil which is of more worth than one's own life, then that law obliges with danger to life: as if, in war, a leader commands a soldier not to depart from his station, or if souls would perish unless a pastor helped the sick laboring under plague.

A law, even human, will also oblige with danger to life when its violation is demanded in hatred of the faith or contempt of religion. Cf. c. 2205 § 3.

These cases being excluded, no human law of itself obliges with danger to life or a similar inconvenience. As to divine positive laws, this can prudently be transferred, attention being given to the gravity and intimation of the obligation. Thus the integrity of confession could on that account be neglected, but not every profession of Christian faith.

— On fear. Fear itself is reduced to inconvenience. Fear always diminishes malice; it often removes it, when the observance of the law thereby becomes too inconvenient. Hence we have the above-mentioned cc. 2205, 2218. Cf. n. 82.

Yet if the common good requires that a penalty be urged notwithstanding grave fear, the penalty will not be avoided because of fear. Thus before the Code they judged that even he was liable to censure who from grave fear had accepted a duel. And since that censure is confirmed by the new law, it must now be interpreted in the same way, from c. 6, 2°.

— Voluntary placing of an impediment. You ask whether or not it is lawful voluntarily to place an impeding cause?

A general answer cannot be given. Of itself, indeed, the law requires that the subject procure its observance and therefore make himself capable of observing the law, much less create an impediment. But that care is not to be urged in such a way that the law becomes more difficult; and the impeding cause can be so good that the legislator is judged reasonably to prefer this good to the observance of his law. Wherefore the various cases must be prudently estimated.

But these things seem to have to be weighed:

1. The force and rigor of the precept, from the matter and common interpretation. Thus the law of fasting is urged more benignly today than the law of the breviary; the obligation of justice is graver than that of fidelity, obedience, and religion itself, when there is question not of a natural precept but of positive right; hence you must do more lest you be prohibited from reasonably executing your office of teacher or servant than from hearing Mass or observing a fast.
2. The extension of the impediment itself. A cause of charity on account of which it is lawful once or twice to omit the breviary, or Mass, will not permit you never to recite the hours or hear Mass.
3. The necessity or utility of the impediment. Labor undertaken for honest recreation will not excuse from fasting as labor by which you support a family, or cultivate science, will.
4. The distance of the precept itself. The nearer is the hour at which the precept urges, the greater cause is required for placing an impediment; while you are dispensed from attention to remote precepts, lest too grave an obligation fall upon you. Wherefore, if the time of obligation is not yet near, no special cause is required that you place an impediment.

Hence: "Precepts or laws whose obligation frequently recurs, such as fasting, abstinence, assistance at the sacrifice of the Mass, then only prohibit an impediment from being placed indirectly without a just cause, when the day of obligation is already almost at hand, at most on the preceding day in the afternoon. Wherefore one who on Friday, indeed even on Saturday morning, undertakes a journey, foreseeing that on Sunday he cannot be present at Mass, indeed is not to be praised if he does not have a special cause for the journey; nevertheless he is not guilty of violation of the law of hearing Mass. But if Sunday is near, especially toward Saturday night, or if Sunday has already begun, it is lawful for no one without a just cause, and the nearer the time is at hand, the graver also the cause

must be, to cast himself into such impossibility ... Almost the same is said of him to whom intemperance is a cause why afterwards he cannot fast or hear Mass" (Lehmkuhl, 1, 252).

On the contrary, for the precept of paschal communion it will not be lawful to place an impediment even some days before the time of obligation urges, unless a sufficiently grave cause has been present; and graver indeed if you foresee the omission not only of paschal communion but also of annual communion.

5. The relation between the impediment and the matter commanded. The more intimate this relation has been, the more the care of avoiding impediments seems to pertain to the inconveniences connected of themselves with the law.

Thus possession of the breviary is connected with recitation of the hours; but not flight from untimely air lest you suffer toothache and be impeded thereby. Thus also, although the relation is already nearer, someone ought not to seek absolution from a censure so that he can be present at Mass, unless perhaps for a long time, for example for several months or a year, he is thereby forced to abstain from Mass.

But what if directly, in order to flee the law, you have placed the impediment? The authors who pose this question rather deny that this is lawful, for example Lehmkuhl I, 251; Bucceroni, *Institutiones*, I, 221. "For a law," thus Lehmkuhl, "which requires its fulfillment, also requires that the necessary means be employed. But if necessary means must be employed, or impediments removed, a fortiori it is not lawful with that will, lest the law be fulfilled, to place impediments." Others, as Genicot, I, 116, omit the question.

Wherefore, although for another cause you can choose the day which precedes a fast for hunting, even if you foresee such fatigue of body as will impede the fast, it is not lawful for you to choose the same day for this reason, that you may be excused from the obligation of fasting by that impediment.

Lehmkuhl, however, l. c., admits that an action can be undertaken industriously "which is of far greater moment and into which I justly suppose that I can transmute the lighter law: as if someone, both from other causes and from this cause also, lest he have to fast, devotes himself to the laborious service of the sick to be cared for in a time of contagion."

§ 4. On Granted Dispensation

— By dispensation itself the obligation of the subject is taken away.

I. Notion. Dispensation, however, is "the relaxation of law in a special case" (c. 80). Therefore it differs:

a) From excuse, which indeed takes away obligation from the mind of the Superior in making the law, but without the intervention of the Superior: wherefore any expert and prudent man can declare someone to be immune from a law. Dispensation, on the contrary, means a certain retraction or attenuation of the will first had. (Lehmkuhl, I, 254; Wernz, I, 119);

b) From invalidation of obligation, which generally arises from dominative power, and touches the law only mediately. Thus vows of children not emancipated are invalidated by the father;

c) From privilege, which positively constitutes a certain right, while dispensation operates merely negatively;

d) From license, which is a faculty made according to law; a condition, on which being posited, the act is permitted by the law itself. Therefore it is not, as dispensation is, against the law, or a wound of the law [1]. And the necessity of license is understood to have been imposed in such a way that, unless formal and express license is required, license can be presumed. That is, it is judged enough that you act dependently on the Superior: which dependence is preserved if, according to a prudent estimation of mind, the Superior would grant the matter, and it is not repugnant that, with attention to the circumstances, the petition of license be omitted. Wherefore, if dispensation cannot be presumed, because presumption does not supply a causal effect, license can of itself be presumed, since it supposes no causal effect. Dispensation requires jurisdiction; license can flow from any legitimate power.

[1] Thus, from c. 1398 itself, the faculty as to prohibited books is not a dispensation, but a license, since the prohibitions are not absolute, but are against reading, etc., "without due license."

— II. The author of dispensation. By the will of him from whose will the law obliges, the bond of law can be taken away by dispensation. Wherefore the author of the law, or one who has superior or equal power, can always loose anyone from the obligation of the law by dispensation.

Anyone, I say, except himself, since by a superior law he must observe his own law. But when a just cause accedes, he himself is exempted where another is dispensed, because the reason of the common good, on account of which the legislator must observe his law, does not require that he be bound more firmly than the subjects; indeed rather it requires that the same just causes of excuse be able to hold. (There is no question concerning God, who is not formally bound by his law.)

An inferior to the legislator cannot dispense except by derived power, and because of a just cause: for a faculty given for dispensing is not judged to have been conceded for dissipating. Power, however, is communicated by delegation, which can be universal and on account of the dispenser himself, or particular and on account of the one dispensed. This delegation again can be conceded as subdelegable or not. The greatest delegation occurs when power is communicated as ordinary. Hence they distinguish power made for dispensing by ordinary right or by delegated right.

— III. The required cause. A just cause, which is always required for liceity, and, for a Superior who is inferior to the Legislator, for validity itself, ought not to be so great that of itself it exempts from the law, nor can it be too slight: this must be prudently estimated for individual precepts.

A legislator who dispenses in his own law without cause, scandal or other grave evils being excluded, is thought to sin only venially, as also he who knowingly seeks from him a dispensation without cause. The very use of such a dispensation, which is valid, does not seem of itself to be illicit.

On the contrary, both the concession and the petition and the use knowingly made of an invalid dispensation are grave sins where there is question of a grave precept.

Furthermore the causes of dispensing can be interior or exterior to the observance of the law. Interior to the observance are difficulty, the inconvenience of the observance of the law, an impediment which in this case or in this person the observance of the law brings to a better good: for these causes dispensations from the observance of Sacred Time (fasting, hearing Mass) are generally granted.

Exterior causes are drawn either from the person dispensing, when it is expedient that he show himself liberal and benign; or from the person to be dispensed, to whom the dispensation will either be useful or seems to be granted for good merit; or from the common good: for example, to prevent too many transgressions, to increase common joy. For more, cf. Suarez, *Leg*. l. 6, c. 18, n. 15-18; 23-26.

Yet the use of every cause, if the one dispensing is not the legislator, is not always permitted. For it must be seen in what way the faculty has been delegated, within what limits it is contained.

Such a cause can exist as obliges the Superior to dispense. Nevertheless, a dispensation unduly denied does not of itself excuse the subject from observing the law.

To amputate anxieties in this matter, it will be helpful to note these things: a) The legislator is judged to permit that even a delegate dispense in doubt concerning the sufficiency of the cause (not likewise in doubt concerning the existence of the cause), lest more frequent doubts open the way to scruples and difficulties. Hence c. 84 § 2: "A dispensation, in doubt concerning the sufficiency of the cause, is licitly sought, and can licitly and validly be granted." b) A subject who alleges his reasons to the Superior and in good faith seeks a dispensation, once the dispensation has been obtained, can be secure. c) In doubt, one can answer for the validity of a dispensation that has been made.

But what if afterwards it has become known that the cause was lacking? We suppose that it is not the case where, either from the object of the dispensation or from the form by which dispensation was given, the competent Superior established that the dispensation would be efficacious in every case.

Therefore, if there has been no cause, the dispensation falls, and from that moment the futile attempt to use the dispensation will become formally illicit. If there has been some cause but an insufficient one, a dispensation which has a successive course, that is, which permits several distinct applications, falls for the future; but one which had to be efficacious once for all, for example to make a marriage valid, does not necessarily fall, but it must be prudently estimated what the author of the dispensation, by his own or delegated authority, could and wished to do.

What happens when the cause ceases, cf. here below.

— IV. The subject of dispensation. Since it requires jurisdiction, dispensation of itself can be granted only to subjects. Yet it happens that law extends the use of dispensation to non-subjects for their greater facility, or lest they be or become of worse condition than the subjects themselves.

Can a Superior or one having faculty dispense himself? He certainly can do this indirectly; insofar as he has comprehended himself in the general faculty made, by which, for example, he looses the whole diocese from some obligation. Endowed with the power of delegating, he can also make faculty for a delegate, for example a confessor, to dispense with himself. A subordinate dispenser can also do this directly according to the mode in which faculty has been conceded to him. For an act of voluntary jurisdiction does not seem to require distinction of persons. Thus a faculty made for a confessor is sometimes restricted to penitents, while a faculty given to a Superior generally does not prohibit this use for him. A legislator, as we have said, in his own law, just as he does not bind himself, so he does not properly dispense with himself; but where there is cause for dispensing, he can have himself as dispensed. We prefer this explanation. There are, however, those who concede to the legislator a direct faculty of dispensing with himself. Cf. Wernz, I, n. 123.

Dispensation, of itself, can be sought and obtained for another. Nor do acceptance of the dispensation or formal intimation to the one dispensed seem of themselves to be required. But attention must be given to the statutes of positive law, especially where the dispensation is at the same time onerous, for example brings about a change of religious state [1]. That conscious use of a dispensation is inaccessible to one ignorant of it is self-evident.

[1] Wherefore, although petitions directed to Sacred Congregations do not of themselves have to be autograph, when there is question of dispensation from the obligations of sacred order, the Sacred Congregation of the Sacraments is accustomed to require the writing and signature of the petitioner.

— V. The force of a dispensation that has been made must be gathered from the power of the one dispensing, from the tenor of the dispensation, and from the definitions of positive law. Cf. more where there is question of ecclesiastical law.

A distinction is made between a dispensation which removes an impediment, an incapacity; and this of itself is beneficial everywhere; and a dispensation which takes away the obligation of a law. This can be only real, which benefits all within the territory, but no one outside the territory; personal, which, being proper to the person, benefits him everywhere; real and personal, which benefits all within the territory, but subjects also outside the territory.

— VI. Interpretation of dispensation. A general faculty of dispensing is judged a grace conceded to the one dispensing: wherefore it is to be interpreted broadly.

On the contrary, the dispensation itself, since it is a wound of the law, of itself requires strict interpretation, especially where the right of a third party is injured. Yet they say broad interpretation is required if the dispensation has been conceded *motu proprio*, or for the common good, or to the community itself, or if it is contained in the body of law [1], that is, now in the Code or universal law: for then it has been given for the common good. On the contrary, a faculty of dispensing with some particular person or for a certain case is morally nothing but concession of the dispensation itself: wherefore it requires strict interpretation. Cf. c. 85, Wernz, I, 125.

[1] St. Alphonsus, I, 104.

— VII. Cessation of dispensation. A dispensation ceases:

1. By revocation, which, in revocable matter, the legislator always validly effects; but an inferior only because of a just cause, and insofar as he is judged to have this power from the Superior expressly or tacitly. Moreover he has this who possesses a general faculty of dispensing, but not a delegate for a particular dispensation. For when the dispensation has been made, the latter, contrary to the former, has exhausted all power. Cf. Wernz, 1, 126.
2. By renunciation of him who accepted the dispensation, provided it has been accepted by the Superior: for without his assent the obligation cannot revive. The competent Superior is to be judged from the dispensation made and the faculties conceded. Thus a confessor dispensing in fasting can retract the very will of dispensing for the future, and therefore can accept the renunciation; but a delegate for a particular dispensation of marriage will not be able to do this.
3. Sometimes by the death of the one dispensing, according to the clauses employed and positive sanctions.

4. Sometimes when the end or cause ceases. Concerning this matter these things come to be noted. If the motive cause has not entirely ceased, the dispensation does not cease. If the cause has been reduced to an irrevocable act, for example if marriage has been contracted, if a benefice has been possessed, the effect of the dispensation, when the cause ceases, is not taken away. But if the dispensation made has not yet been used or can easily be revoked, the mind of the dispenser must prudently be investigated, who could have conceded the dispensation absolutely or dependently on the perseverance of the cause. But they reasonably explain the mind of the one granting thus, that what is conceded at once and all together, and has as it were an indivisible effect, is judged to have been conceded absolutely, as when an irregularity or impediment of marriage is removed. For a law which has been taken away by dispensation cannot revive without a new will of the legislator. Hence a matrimonial dispensation conceded because of poverty, because of offspring to be legitimated, etc., remains efficacious although before the marriage poverty has ceased, the offspring has died [1]. If, on the contrary, the matter has a successive course, for example a dispensation from fasting, from the breviary, from hearing Mass, this reasonably could not have been conceded except as virtually multiple for individual cases of obligation, and subject to the condition of the persevering cause.

[1] But if at the same time an obligation toward God undertaken, for example, by vow of chastity, had to be taken away, the matter is less certain. Cf. Lehmkuhl, I, 269; Noldin, *Princ.* n. 189. We shall examine the matter in its own place.

Summary

— I. Directly, law ceases when a new law expressly revokes the former or is contrary to it, or entirely orders the matter anew; or also when its end ceases contrarily, or it has commonly become useless. But uselessness in a particular case will rarely be able to be alleged.

II. The bond of law is dissolved:

1. When subjection has been removed, a) because of a changed condition of the person or because of changed territory; b) because of privilege.

Privilege means a particular and non-necessary right conceded by a beneficent will to persons, whether physical or moral.

Divisions of privilege. From object, privilege beyond the law grants a faculty which is prohibited by no law; privilege contrary to law withdraws from the command of law a person or act which is subject to it: it is conceded only to subjects and of itself is of strict interpretation. Privilege according to law is had only formally, insofar as what the law concedes is given by a title distinct from law. From its motive it is gracious, remunerative, onerous. From its origin, it is obtained by direct concession, whether *motu proprio* or at the instance of a party: what is conceded *motu proprio* is to be understood more broadly. Direct concession is made by law (a privilege contained in the Code) or by indult. It is also obtained by communication, by legitimate custom, and by prescription. A privilege introduced by law or custom also follows the norms of law and custom. By prescription a subjective right is rather obtained than a norm of right constituted. Communication extends to other persons a privilege conceded to certain ones; and this either by a particular act or by a general disposition. Communication can be in principal form and in accessory form: in the former case, but not in the latter, the privilege subsists independently of the prior concession. A real privilege is annexed to a

thing, place, office; a personal privilege adheres immediately to the person: among personal privileges are numbered privileges conceded to a pious cause, a religion, etc. Privilege, generally favorable, also becomes odious insofar as it is onerous to another or, for the advantage of private persons, is opposed to common right.

The interpretation of privilege requires that the tenor of the words be observed; and that the privilege always effect something. Interpretation is sometimes to be made strictly, sometimes and of itself broadly.

The use of a privilege of itself is free; by accident it becomes necessary, whether to subject persons or even to a community.

Privileges cease when the day arrives, when the person or thing to which they adhere has been extinguished, by revocation, by liberative prescription of him who bears the burden; by renunciation, which is not always licit or valid.

2. The bond is also dissolved through impediments of execution.

a) Invincible ignorance, already of itself; vincible ignorance, sometimes from the will of the legislator, excuses from obligation.

b) Impotence excuses, whether it is strictly such, or also an excessive inconvenience, accidental and not accepted in an office. From the necessity of the common good or of a connected negative precept of natural law, law obliges even with danger to life.

c) Fear always diminishes malice; indeed it can create an excusing inconvenience.

To the question whether or not it is lawful voluntarily to place a cause of impediments, one must answer with distinction, by attending to the rigor of the precept, the extension of the impediment, its utility, its distance from the precept, the relation between the impediment and the matter commanded, and thence prudently gathering the will of the legislator. The cause can be so good, for example charity toward the sick, that it is right to seek with direct intention an excuse from the precept.

3. Through dispensation, or relaxation of law in a special case. This differs from excuse, from invalidation, and also from license, which is a faculty made according to law, so that it is not a wound of the law, and which can also be presumed.

The author of the law, or his equal or Superior, dispenses others by his own right, yet not directly himself, since he is held by a superior law; but he himself is exempted where others would be dispensed. Yet he can comprehend himself in a general dispensation; indeed he can delegate power for dispensing with himself. Others dispense by delegated power, whether universal or particular. The greatest delegation occurs when power is communicated as ordinary.

A just cause, always required for liceity, is required for validity if the one dispensing is not the legislator. Causes can be interior to observance, such as excessive difficulty, inconvenience; or exterior to the same, which are drawn either from the person of the one dispensing, or from the person dispensed, or from the common good. Dispensation is licit in doubt concerning the sufficiency of the cause; just as in doubt one must answer for the validity of the dispensation, so that a subject

sincerely and in good faith seeking can be secure. If it has appeared that there was no cause, the use of the dispensation becomes illicit. If it is demonstrated that the cause was insufficient, a dispensation which has a successive course ceases for the future; but one which had to be efficacious once for all falls or not according to the prudently estimated mind of the one dispensing and his power.

Of itself dispensation is conceded only to subjects. Yet law sometimes extends the benefit of dispensation to non-subjects, for instance to exempt religious. According to the mode in which power has been made for him, a delegated dispenser can or cannot dispense with himself.

Dispensation can also be sought and obtained for another, nor of itself does it require the consent of the one dispensed. A dispensation which takes away an impediment or incapacity is beneficial everywhere, as is also a personal one; a real one benefits all within the territory.

A general faculty of dispensing, since it is a grace made to the one dispensing, is to be interpreted broadly, otherwise than the dispensation itself, since it is a wound of the law, unless it has been conceded *motu proprio*, or for the common good, or to the community itself, or by law.

A dispensation ceases by revocation, whose author can be the legislator or one who has a general power of dispensing; it also ceases by accepted renunciation, by the death of the one dispensed, when the end or cause entirely ceases, if the matter has a successive course, but not if the cause has been brought to an irrevocable act, such as marriage. If use of the dispensation has not yet been made, the mind of the one dispensing must prudently be explored.

Chapter X: The Diminished Character of Law

§ I. - On Precept

— I. Notion. The common good itself demands that provision be able to be made for accidental necessities by commands either particular or less stable. I call particular commands those which are given to one or to relatively few. Less stable commands also occur as needing to be given by accident even to some whole order of citizens, indeed to the whole state: for example, public prayers which are enjoined when a plague is raging.

Moreover, by particular commands many persons are by their nature to be ruled who are subject by age, by infirm mind, or by voluntary subjection, as are private households and lesser communities.

Commands of this kind are precepts.

In public society they occur because of an accidental cause. Wherefore not every public society has precepts, although every one has laws. Laws, as we have seen, can be temporal, although of themselves they are rather perpetual; with attention to their cause, or with attention to their subject, precepts are of themselves temporal or precarious.

— II. Division. Precepts can proceed from dominative power and from the power of jurisdiction. Those which are given from the former power necessarily cease by the death of the one commanding; for they are founded in the mutual relation of persons, which is removed by the death of either. But nothing of itself prevents precepts given from the power of jurisdiction from persevering after the death of the one commanding. Cf. Wernz, *Ius Decr.*, I, 135. Positive law, therefore, must be approached.

The general chapters of exempt clerical religious institutes (c. 601, § 1) have legislative power by which they can prolong by their decrees any precepts whatsoever of Superiors: those also which have been given from dominative power. If therefore they establish that the precepts of Superiors remain in force until they have been revoked by a successor, those precepts, after the Superior has departed from his life or his office, will persevere insofar as they have been confirmed by jurisdiction or virtually assumed by a moral person which does not die. Cf. Wernz, l. c., note 235.

With respect to the persons to whom they are given, some precepts are given to individual persons, others to some class of persons, others to the community itself, whether dependently or independently of territory.

§ II. - On Counsel

— I. Notions. 1. This is the difference between counsel and precept, that precept imports necessity, but counsel is placed in the option of him to whom it is given (St. Th. 1, 2, q. 118 art. 4).

2. But counsel is not given concerning the end, but concerning the means to the end (1, 2, q. 14 art. 2). For it denotes inquiry concerning things to be done, and reasons are taken from the end.

Therefore, because good, as such, has the character of an end, counsel properly is not given concerning an action as good, but concerning an action as useful for good. Yet the action itself which is good can be ordered to a greater good. And thus counsel concerning a good action can be given.

And so the object of counsel properly so called is an action as useful for the end; which action in itself can be indifferent or good.

3. By a broader usage, the object of counsel is said to be a good action which, with attention to its objective character, is not prescribed, or a good work not prescribed, better than its opposite or than its negation which is not evil. Cf. Passerini, *De hominum statibus*, on q. 184, n. 25-26; Palmieri, *Op. th.*, IV, tr. 9, c. 1, n. 4.

Hence also good works, in circumstances where they are not prescribed, are called counsels in a qualified sense, while works which by their kind are not of some virtue but conduce to the perfect exercise of the virtues are counsels simply. Cf. Passerini, l. c., n. 56.

— II. Division. Counsels are distinguished into some general and some particular; and this in three ways: a) with attention to their power, insofar as some counsels are of general or universal utility for every exercise of the virtues, especially for obtaining charity, while others possess a utility circumscribed by a particular good [1]; b) with attention to their subject, some befit men of themselves, as the three evangelical counsels, others because of particular circumstances, as the counsel concerning marriage [2]; c) with attention to their promulgation or intimation, some are contained in law (thus the evangelical counsels), others are proposed by particular speech.

[1] Suarez, *Rel.*, tr. 7, l. 1, c. 8, n. 2; Molitor, O.S.B., *Religiosi iuris capita selecta*, c. 1, n. 1.

[2] Otherwise Suarez, l. c., n. 6; Passerini, l. c., n. 58.

Summary

— I. Under the name of precept come particular or less stable commands which provide for accidental necessities of society or of persons. Some precepts proceed from dominative power, others from the power of jurisdiction: the former necessarily fall with the death of the one commanding, unless they are prolonged by the power of jurisdiction. Precepts are given either to individual persons or to the community.

II. Counsel, by which a persuasive dictate is communicated, is made properly concerning a means, not concerning an end, and therefore strictly concerning an action not insofar as it is good, but insofar as it is useful either for good simply or for a better good. By a broader usage, the object of counsel is a good work not prescribed. Counsels are particular and they are general, with attention to their power, subject, or intimation.

Title II: On Diverse Laws

First one must write of divine law, then of human law.

Chapter I: On Divine Law

Usefulness. - It is an office of religion that we know and esteem the divine law according to its worth. Nor without divine law can we acquire knowledge of human law, of which, in moral and canonical matters, there are perpetual applications.

Divine law is distinguished as eternal, natural, positive.

Article I: On Eternal Law

— I. Notion of eternal law. Eternal law is "the very reason of the government of things existing in God as in the prince of the universe" [1]. It is the eternal determination of creative wisdom, which coheres by an undivided bond with the creative reason itself. Through it, all creatures, according to their nature, are ordered to their end. According to their nature: and therefore by physical necessity, if they are irrational; by moral necessity, if they are rational.

Insofar as it regards rational creatures, law places in God not only an ordering to the common good but also the decree of promulgating it, so that all the elements of law are present in God as in a legislator. Yet because law connotates an accomplished promulgation, and this supposes creatures, that law, before creation, is indeed causally complete, but terminatively incomplete. For more, cf. moral philosophy.

[1] St. Th. 1, 2, q. 91 art. 1, c.

— What it comprises. That eternal ordering comprises both that hypothetical order congruent with the nature of things, which divine Wisdom necessarily conceives: the order of pure nature; and the higher and more perfect order by which divine Goodness, beyond the due of nature, decreed from eternity to order rational creatures to Himself: the order of elevated nature; and the most excellent order of all, by which divine mercy willed to repair in Christ the nature fallen in Adam: the order of repaired nature.

Article II: On Natural Law

— I. Notion. 1. Natural law is "nothing other than the participation of eternal law in the rational creature" [1]. Participation is had through the light of natural reason, by which man knows that the things which God has ordered have been imposed upon him, and, according to that primary ordering, he can also provide for himself and others through secondary orderings. But natural reason, of itself, can know only the order proportioned to human nature. Wherefore natural law is circumscribed by that part of eternal law which places an order congruent with non-elevated nature, and therefore an order hypothetically, that is, supposing creation, necessary: it cannot reach the higher order, which contains and perfects the former.

2. Natural law founds every other law: not only human law, because the principle of obliging cannot be in man [2], but also positive divine law. That I may be held by this, it is necessary that, in my nature, I first have read the dominion by which God possesses me and has my will subject to Himself.

[1] St. Th. 1, 2, q. 91 art. 2, c.

[2] St. Th. 1, 2, q. 93 art. 3.

— II. Promulgation. Natural law, since it is the very order of nature, has been promulgated in human nature itself. Wherefore, although in the present condition of the human race it can have obscure parts, even according to those parts it obliges us all in first act, and ignorance of them only brings excuse to the person obligated of himself.

That is, contrary to what Lehmkuhl thinks, cf. I, 177, it has been promulgated whole. For by whatever way I know that some such thing is required by the natural order, already I read it in my nature, or in the authentic instrument of promulgation. From the beginning it is wholly in us habitually [1]. We think it must be denied that there are parts strictly impervious to the human intellect: these would not pertain to natural law. But if, with respect to the parts which are now obscure to us and for which revelation is morally necessary for us, natural law had to be called not promulgated, those parts, after revelation, would pertain to positive divine right and not to natural right: which no one will admit.

[1] Cf. St. Th. 1, 2, q. 91 art. 1 ad 3, and the response to the contrary.

— III. Divulgation. In the present condition of the human race, divine revelation is morally necessary so that natural law can be known sufficiently expeditiously, sufficiently certainly, sufficiently fully, and sufficiently generally. But the revelation by which that sufficient knowledge was given is now at the same time or identically revelation made for a supernatural end.

But even after revelation, if many things are plain to all, many others must be learned by the less instructed from the more learned, and many remain long controverted and doubtful even to the learned themselves.

Concerning those natural duties which of themselves are known to all, both these things are usefully noted.

1. Besides certain things which are so proximate to the first principles that they cannot be unknown, there are not a few conclusions, even not so remote from the first principles, which, at least outside the matter of justice, by accident are unknown by many for some time; and this ignorance can also, because of depraved customs, be increased, so that, for example, simple fornication is everywhere not held to be illicit. Cf. St. Th., 1, 2, q. 94 art. 4 c. and art. 6.
2. But the things which are known by all become known not only from a higher principle to which they can be reduced [2], but also are perceived in themselves by direct intuition. Hence it happens that, concerning many things which are not doubted, the demonstration can be laborious and controverted: for example, concerning the grave malice of every voluntary pollution, concerning the duty of gratitude.

[2] St. Th. 1, 2, q. 94 art. 2.

— IV. Firmness. Nothing prevents many things from being added to natural law. But from it nothing can be subtracted. Wherefore the things which are imposed by natural law are immutable. But the matter of certain precepts can be placed, some in human power, some in divine power.

By the use of such power, it sometimes happens that, in fewer cases, a precept seems to cease negatively or even contrariwise.

Thus the common destination of material things brings it about that public power, for just causes, can transfer dominion from one person to another, and that things need not be returned to an owner who asks for them unreasonably. In these cases, the duty of returning the thing to the owner will not press; indeed it can be impeded by a stronger duty. God Himself, not as legislator but as lord, can bring it about that the note of homicide or of fornication is absent from a certain killing or from a certain intercourse, 1, 2, q. 94 art. 4, c.; art. 5, c.

But those apparent changes or exceptions furnish us no reason why, by our private authority as men, we should restrict the absolute dictates of natural law when it is a question of matter which is withdrawn from our power, such as, for example, the human person. Thus it will never be lawful, by private authority, to kill a man.

Nor, in the same matters, can cessation of the end on account of which, for example, pollution and fornication are prohibited, be alleged so that someone may think himself immune from the order to be observed. For we are subject not to the end alone but, and indeed most of all, to the very order established on account of the end. We find the title of our obligation less in the end, which can accidentally fail, than in the nature whose order is inviolable for the individuals who participate in that nature. That is, God does not command human nature through individual men, so that the immediate obligation of individuals would produce the obligation of nature, but He commands individuals through nature. To remain in the examples adduced, the precept is not only: "take care that men be duly multiplied, that offspring be prudently educated," but it is especially: "preserve the order of nature, which has been constituted for that purpose." Besides, since we bear in ourselves, toward the natural end, an intrinsic disposition or ordering, one already begins to act against the end who disturbs that disposition in himself by violation of that order, so that, whatever may happen, there is nevertheless already sin against the end of nature. Finally, the end which in some case seems to cease is not the adequate end, but generally is already seen by human reason itself to be only partial. And who are we to assign an adequate end to the work of God?

Thus, when St. Thomas demonstrates that fornication is a grave sin from the fact that it is against the good of offspring, the holy Doctor neither is ignorant of nor intends to deny the many other evils which extra-marital intercourse carries with it.

That conclusion is confirmed by the dangers of delusion. The most approved theologians agree in it, especially those of the golden age of the scholastics of the Middle Ages, who therefore, in demonstrating the grave and absolute obligations of natural duties, did not experience that difficulty which has made even excellent theologians of our age more or less hesitant.

For this reason, concerning natural law itself, St. Thomas could write: "that which falls under the determination of law is judged according to what commonly happens, and not according to what can happen in some case" (2, 2, q. 154, art. 2).

Kant also confirms this in his own way, when he proposes this perpetual rule of acting as necessary: "Act so that your action can be regarded as a universal norm." (*Krit. der praktischen Vernunft*, 1 T., 1 B., 1 Haupts., § 7.)

— V. What things are contained in natural law. All the precepts of natural law are founded in that highest natural precept of which there is no ignorance: "Good is to be done, and evil avoided." That is, by natural law all those things are prescribed to be done and avoided which reason naturally apprehends to be determinately human goods or evils [1].

Those precepts themselves can be variously distributed or set forth in a logical order.

Thus, taking man as a creature redeemed by Christ, we see that man, insofar as he is a creature, ought to do those things which glorify God; but insofar as he is redeemed by Christ, that his actions ought to redound to the glory of Christ. Then, in natural inclinations, according as they are regulated by reason, we detect that there pertain to natural law those things which regard the proper preservation of man, the propagation of the human race and the due education of offspring, higher truth and social life: which are the inclinations of man as he is a substance desiring its nature, as he is an animal, and as he is a rational animal. For those things to which we incline are at the same time an end and a good, since the aspect of good is in the end. Cf. St. Thomas, 1, 2, q. 94 art. 2.

The same precepts can also be proposed as certain corollaries of principles or of more general precepts. Thus from the precepts of the Decalogue many other precepts are gathered.

There are also postulates required by the end for which the law itself was constituted. Thus we are taught by the very end of every law, which is that we have charity with God and with other men, that we must act in a spirit of charity [2].

It also appears that the order of nature is composed of these three orders: the order which man must preserve toward God; the order which he must maintain toward neighbor; and the order which he must care for in himself. And the various precepts which are customarily recited are referred to these principles and are illustrated by these principles.

Hence the order of nature is shown to be entirely essential, insofar as it rests upon essences themselves, and at the same time it is nevertheless understood how it has less substantial parts. Thus, to the integrity of man in himself there pertain certain particular orders without which, nevertheless, man is seen to remain substantially ordered in himself. Cf. what is to be said concerning mortal and venial sin.

[1] St. Thomas, 1, 2, q. 94 art. 2.

[2] 1, 2, q. 99 art. 1 ad 2.

— VI. Subject of natural law. Every man is subject to natural law. Wherefore, although children and the perpetually insane cannot formally sin, they can commit material sins; and human nature can be violated by others in them. Wherefore they are to be blamed who are the cause why shameful things are done by children; and while they abuse childish simplicity, they commit a certain kind of stuprum.

— VII. Sanction of natural law. "Wherever there is some due order to an end, it is necessary that that order lead to the end, but withdrawal from the order excludes the end [1]." Lehmkuhl, I, 279, confirms the same in these words: "The divine will left freedom to rational creatures, here we take man, in such a way that, according as they were freely to conform themselves to the divine will or to resist it, they would consult their own happiness or misery." And indeed, eternal law, of which natural law is a participation, in its concept denotes the ordering by which God recalls all things to Himself, and at

the same time brings creatures to their proper perfection. Therefore, by whatever reason or proportion the free creature withdraws from that order, by the same he virtually chooses withdrawal from his own perfection or good and beatitude, and from God. And opposition of contrariety brings aversion both from God and from one's own perfection or beatitude. And since the natural end is contained eminently in the supernatural end, in whatever manner one withdraws from the natural end, in the same manner one withdraws from the supernatural. Therefore, in this connatural sanction of natural law, we detect a certain immediate indication or explanation of mortal and venial sin, concerning which later; and already we understand in what way sinful man himself is the maker of his own ruin. Cf. St. Th., *c. Gentiles*, book 3, cap. 140 and following.

Therefore by its very essence, natural law in its entirety is moral. And because that law imposes the whole order of reason, that whole order also must be said to be sanctioned by natural law.

This also must be observed concerning the sanction of divine law. That sanction must be perfect, insofar as it is proportioned to every force and difficulty of the precept, so that it can never be truly useful or blessed for man to withdraw from that law; but there is no need that in fact it obtain an almost universal observance of the law. The reason is that, whether men observe or violate the divine law, the primary end of that law, the external glory of God, will in no way be frustrated. Human laws, on the contrary, must be practically efficacious, lest they be useless.

[1] *Summa contra Gentiles*, III, 140.

Article III: On Positive Divine Law

— A twofold positive divine law is distinguished: the law of the Old Testament, which was; the law of the New Testament, which is.

I. The old law contained moral, ceremonial, and judicial precepts. Of itself it did not confer grace. The Wurzburg Theologians [1] assign to that law this threefold first and ultimate end: the spiritual and supernatural happiness of the elect people; the peculiar honor of Christ, for whose advent the people prepared itself through explicit faith; the institution of the elect people toward necessary honesty, divine worship, and polity.

One part of the old law was proposed by God to the elect people through the ministry of angels, another part through Moses. The part which the angels dictated is the Decalogue, all of whose precepts are moral, if you except the determination of the sabbath as the time in which one was to be free for God.

Yet the Decalogue does not formally contain all moral precepts. For it does not contain the two highest precepts and principles of the others, which, either through nature or through faith, are known of themselves to human reason, that is, the precept of love of God and of neighbor; nor does it express remote moral consequences which by diligent inquiry are found to be fitting to reason. But it formally enunciates those things which can be known from common principles by modest consideration, and pertain to the three virtues which are especially necessary for human intercourse, that is, to religion toward God, to piety toward parents, and to justice toward others in general.

Yet present usage has it that we refer all moral duties to the ten precepts of the Decalogue, according to the connection which they are shown to have with the individual precepts. Cf. 1, 2, q. 100 art. 3.

Moreover, "the priesthood being transferred... it is necessary that a transfer also be made of the law" (Hebr. 7, 12). Therefore the whole old law has been abrogated. Nor are the moral precepts to be excepted. But these subsist, not by force of Mosaic promulgation, but by force of the initial promulgation in reason and of the more recent promulgation in the Gospel or New Testament.

II. But the New Law imposes no other precepts except those of faith and the sacraments. For the Lord, the author and promulgator of the law of love, left all the remaining things to be defined by the Church.

[1] *De Legibus*, n. 11.

Summary

— I. Divine law is distinguished as eternal, natural, positive.

1. Eternal law is the very reason of the government of things existing in God, with the decree of promulgating it, insofar as it regards rational creatures. Causally it is complete in God, but, as long as subjects do not exist, it is terminatively incomplete. That eternal ordering comprises the hypothetical order of pure nature, the order of elevated nature, and the order of repaired nature.

II. 1. Natural law is the participation, through the light of reason, in the rational creature, of eternal law, insofar as it contains the natural order. This law founds every other law, even positive divine law. It has been promulgated whole in our nature, although its sufficient divulgation now requires revelation. Few things are so proximate to the first principle that they are known by all. The things which are thus plain are established not only deductively from a principle, but also, and more easily, by direct intuition.

2. Natural law is immutable, although by subtraction of matter it is sometimes apparently changed. And cessation of the end can never be alleged so that man may think himself exempt from observing the natural order.
3. The precepts of natural law are founded in that highest principle: Good is to be done, evil avoided. The precepts themselves can be variously distributed. Although the whole order of nature is essential, or founded in the essences of things, nevertheless it has some parts which are substantial, others secondary, or as it were accidental.
4. The subject of natural law is every man.

Natural law has the perfect sanction of happiness and ruin; and, whether it is observed or not, it will attain its primary end.

III. There is a twofold positive divine law: that of the Old Testament, whose most important part is the Decalogue, which nevertheless does not contain all moral precepts, and is wholly abrogated by the promulgation of the evangelical law; and that of the New Testament, which imposes no other precepts except those of faith and the sacraments.

Appendix: On the *Ius Gentium*

Usefulness. - In today's social and political controversies, accurate notions concerning the *ius gentium* come very much into use.

— Various uses of the terms. The appellation *Ius Gentium* is sufficiently equivocal. For at Rome it designated that right, constituted more by natural equity, which foreigners used, while civil laws had been made for the Quirites alone. Sometimes, in a signification not pertinent here, the inclinations proper to man insofar as he is a rational being were formerly said to be ruled by *ius gentium*, but the instincts common to men and brute animals, for instance the instinct of preservation and of propagation, by natural right [1].

By the most frequent usage today, *ius Gentium* is called the right which must be observed among nations in time both of peace and of war, and which, at least in part, has been defined by positive agreements.

The present question. - But there are many institutions which are seen to be in force almost everywhere, not to say everywhere, and seem to arise neither from positive law nor from properly natural right. Institutions of this kind: some regulate relations among inhabitants of the same commonwealth, so that they could materially be described as the civil law of very many nations; thus the right of prescriptions, the division of goods, and formerly servitude itself. Others regard either the condition which foreign citizens obtain in another commonwealth, or those things which must be observed among commonwealths: the various privileges of ambassadors; the forbidden occupation of the high sea; the concession to individual peoples of the adjacent sea to a certain distance; the observance of a white flag.

Now, concerning the formal reason by which institutions of this sort are in force, there is inquiry and dispute, since some call it natural right, others positive right; others a certain middle right, which some contend approaches more to natural right, others more to positive right.

Its solution. - Omitting controversies here, we establish that this right is truly middle. For, the human race being considered as it now is, after men had been sufficiently multiplied that they ought to come together into perfect society, they of their own accord, without the authority of anyone or formal agreement, agreed concerning the division of goods and of nations, concerning admitting ambassadors, etc. For the necessity of institutions of this kind was manifest to them. Nature indeed, by itself alone, seems to leave the option of divided or conjoined possession, of a singular or plural commonwealth, and so forth. But after those institutions have been introduced, nature itself, which wills to sanction social cooperation efficaciously, confirms them and makes them obligatory. Therefore they pertain to a truly middle right, insofar as a positive institution was the necessary condition for the right itself to exist. Nor is it more general or firm than the originating condition itself. Wherefore that right is less universal and less immutable than the right of nature properly so called. Less universal: for it is not repugnant to nature that in certain special circumstances goods be possessed in common. Less immutable: for the circumstances which make the institution manifestly necessary can themselves be the present and common condition of the human race after sin; and such circumstances promise perpetual firmness here on earth to the aforesaid right. And they can also cohere with a more deteriorated stage of human cultivation. Thus the city or commonwealth itself was long not the thing of all, and servitude was said to be necessary, while now the prohibition of

servitude pertains to the *ius Gentium*. Whether the division of the human race into several nations of wholly independent right will always be such: this also can be doubted.

The *ius Gentium* can be quite aptly referred to natural right, just as customary right is referred to written human right. The former obliges from right established by the Author of nature; the latter from right established by the author of written law. Custom is law promulgated by the morals of a people; the *ius Gentium* is promulgated by the morals of peoples. Finally, both can be confirmed by written right.

[1] St. Th., lect. 12 on book 5 of the *Ethics*; 1, 2, q. 95 art. 4 ad 1 at the end; 2, 2, q. 57 art. 3 c. and ad 3.

— Explanation of the stable right of private appropriation. Because of today's fervent controversies, it seems worth the labor to insist for a little while on the varied reason by which the right of private appropriation - which, imitating the classical writers, we have alleged as an example of an institution of the *ius Gentium* - can be vindicated as independent of civil power. For either it is referred to natural law, which has immediately given that right, yet in such a way that it has made the same subject to several limitations of positive right; or that right is traced back to the *ius Gentium*, such as we have now described it; or it is ascribed to the *ius Gentium* understood in such a way that the tacit consensus of men concerning the division of goods is not only the condition but the true cause of the right itself of possessing goods dividedly. Then, to use a comparison, just as not only those things are to be held by faith which by solemn judgment are proposed as to be believed either in an ecumenical Council or by the Supreme Pontiff speaking *ex cathedra*, but also those things which by her ordinary magisterium the Church teaches as to be believed, so, besides the solemn promulgation of law, there would be a certain implicit promulgation of law in the very consensus of the nations. But then to the multitude itself, as such, true jurisdiction and legislative power must be acknowledged.

The first form of reasoning, after C. de Lugo (*De Iustitia*, d. 6, n. 5-6), is today more received among Catholics; and the Encyclical Letter *Rerum Novarum* seems to sanction the same by its authority. The second manner of speaking, since it traces the formal force of right back to the law of nature, does not contradict the encyclical letter, and as it were suggests a concord between the scholastic doctors and modern Catholics. The third seems more consonant with the views of the classical doctors, but seems to stand at a greater distance from the doctrine received today among Catholics. To the third explanation this also perhaps can be objected, that every force of custom is ascribed to the consent of the Legislator; which does not seem necessary, if the consenting multitude itself imposes law upon itself.

That controversy coheres closely with the question concerning the first subject of public power: is it the people, as they were teaching with moral unanimity in the age of Bellarmine, or does the designated prince receive the same immediately from God? But concerning these things more will be said in their proper place.

— By the formal *ius Gentium* there cannot be explained the wholly particular sanctions of international right which are observed without express agreement. For nature bears itself as plainly indifferent toward these. Therefore recourse must be had to tacit agreement; or there must be admitted a certain true society of more cultivated nations, of perfectly democratic form, whose right rests upon the consensus of the whole multitude [1]. Therefore the recent *Societas nationum* can be considered, not as some new beginning, but rather as the more open and complete ordering of a thing long since

existing. How much it would benefit this Society if the center of Catholic unity were restored into the center of the association of peoples! The solution of all difficulties: Christ!

[1] This opinion is expounded by Suarez, *Leg.*, l. 2, c. 19, n. 9; by Taparelli, *Saggio*, n. 1357-1368; by Van Gestel, *De iustitia et lege civili*, XLII; but it is rejected as a dangerous fiction by Schiffini, *Comp. Ethic.*, n. 193.

Summary

— The *ius Gentium*, whose name has varied usage, here designates for us institutions which are in force with moral universality, although they seem to proceed neither from proper natural right nor from formal positive law.

We judge that right to be middle, insofar as the consensus of men is a required condition; and once it has been posited, it is sanctioned by natural law itself. Therefore those institutions pertain to hypothetical natural right.

II. Thus it happens that the right of private appropriation is ascribed by some to natural right; by others to the *ius Gentium* such as we have described it; finally by others to positive right, yet that of the nations, insofar as, by the authority committed to the human race, through the consensus of the human race, appropriation has been established as a right.

III. Wholly determinate sanctions of the *ius Gentium* must be ascribed either to tacit agreement or to some international society of perfectly democratic form.

Chapter II: On Human Law

Order of speaking. - First we shall treat a few common points of manifest utility: obligation and the secondary forms of laws; then we shall treat of ecclesiastical law and then of civil law.

Article I: Common Points of Human Law

§ 1. How Human Law Obliges

I. - The Source of the Obligation of Human Law

— The true causality of human law. Besides those things which natural law has either itself determined, or at least sanctions after they have been constituted by the voluntary assent of men, there are many other things which can in various ways be ordered to the common good, or which at least, if they are commended by manifest utility, because of the opposed utilities of private persons, will of themselves obtain no consensus except the one which human power has commanded. Therefore the Author and wise provider of nature has conferred upon public authority or the human Legislator the power of defining and urging these things. He, therefore, does not merely give place to some conditioned natural right, but by his will becomes the true cause, and indeed the principal cause, of the law whose scope, severity, and firmness are subject to his will. Yet the very force of efficaciously commanding or obliging in the Prince is present from divine Law, whether positive, when it is a question of the Church, or natural, when it is a question of civil Society. The communication of power through positive divine law was made by the words by which Christ, after recalling that all power had been given to Him, sent His apostles as the Father had sent Him, with the power of binding and loosing. But the communication through the law of nature is demonstrated in the divine will which, willing human society, does not allow the same to be destitute of necessary means.

Therefore, by authority communicated through divine law, human law is the truly principal cause of moral obligation.

II. - The Moral Species of Obligation

— Connatural efficacy of law. He who establishes law or precepts on account of the common good does not urge a particular debt to himself, but efficaciously wills those things which are required by the common good. But the common good, since it coalesces from many elements, requires acts of many virtues, indeed of all virtues, those, for example, by which rights are observed and due services are rendered to parents and Superiors. Therefore, that his governance may be efficacious, the legislator can make those acts necessary according to themselves, or, if they were already due, confirm their necessity by a new title. He effects this when he establishes law, or when he commands from jurisdiction. And so a thing prescribed from jurisdiction takes on the necessity of the virtues to which it belongs, so that violation of the law is opposed to these various virtues. Cf. for example Cajetan, on 2, 2, q. 88 art. 5, where he excellently shows what difference there is between an obligation from law and one which is contracted from a vow.

III. - The Theological Species of Obligation

Because the legislator can command below, yet not beyond, the capacity of the matter, two things must be weighed by us: what matter is capable of grave obligation; what is prudently thought to be the mind of the legislator.

— 1. Matter capable of grave obligation. The observance of positive law, as such, does not denote that immediate relation to the end of man which we detect in the observance of natural law.

Obligation comes because of an end distinct from that which is at once natural and essential; and therefore it draws its necessity not from the essence of the subject to which the law is prescribed, but from that end. Here, however, divine law must carefully be distinguished from human law.

For when it is a question of positive divine law by which we are raised to the supernatural order, the end of the law is man's very higher ultimate end, by which the merely natural end is, as it were, absorbed. Wherefore, when it is imputable, contrariety voluntarily opposed to the order of that higher end has greater gravity than contrariety which would have been repugnant to the merely natural order: for it contains aversion from a more excellent good, contempt of a greater benefit.

But the end of human law is always secondary. It denotes the complement of the primary order by which man is directed through divine law to his ultimate end. Moreover, that end can be discerned and estimated by human reason.

The same thing can be proposed in this other way. Because every other obligation is rooted and founded in the power of natural law, human law obliges conscience insofar as its observance or violation touches the essential order constituted by natural law. Thus, in the private relation between father and son, the violation of a paternal precept will be grave insofar as the father is at once gravely and reasonably unwilling that his precept be violated, and thus the order of piety toward him is truly disturbed. And in the public relation between legislator and subject, violation of law or precept will be thought grave insofar as it is notably opposed to the common good which is intended by the law, or insofar as the community, which acts through the legislator and whose good is intended, must be judged gravely and reasonably unwilling.

To form a prudent judgment concerning the gravity of the matter, two things, as we have already insinuated, must be considered: the object of the law or precept [1], and the proportion of the prescribed means in order to that object. From the end and the intermediate precept, says Suarez, "having been viewed by prudent judgment, the gravity of the matter is to be gathered" (Suarez, *Leg.*, l. 3, c. 25, n. 7; cf. Lehmkuhl, I, 240).

Concerning that prudent judgment, these things must further be noted. a) Considered separately from the end, the matter can be very slight, while, conjoined with the end, it is shown to be grave. Thus, under grave obligation, a very small amount of water is to be mixed with the wine by the sacrificing Priest, because that smallest quantity is necessary and suffices for the symbolic representation of the Incarnation in the rites of the Mass. b) Because of the diversity of the end, the same thing can be grave when it is prescribed by the Church, light when by civil power (Lehmkuhl, I, 240), or even imposed from the dominative power of parents. Thus, the omission of one Mass is grave if it is opposed to the precept of the Church, but not if it contradicts civil law or the command of parents. c) There are many acts which, considered separately, are not gravely harmful to the common good; but they would become such if they were done by many. It gravely concerns the

commonwealth that that danger be averted. Wherefore the human legislator can forbid these things to individuals under grave obligation. Thus, that one citizen withdraw himself from military service or not pay taxes has of itself slight importance. That many withdraw themselves would gravely harm. These things, therefore, can be forbidden under grave obligation.

Presumption favors the legislator if he urges the precept under grave obligation (Suarez, *Leg.*, l. 3, c. 25, n. 4).

[1] Object must be taken broadly, insofar as, besides matter, it comprises circumstances and especially the end of the law, especially the proximate or intrinsic end, through which the virtue to which the prescribed thing pertains is shown. Cf. what was said concerning moral specification.

— The mind of the legislator concerning obligation. That we may prudently solve the other question, namely when the legislator is judged to command according to the capacity of the matter, when to diminish the obligation or even to establish a merely penal law, ecclesiastical law must be wholly separated from civil law. It is already understood of itself that in a society which exists on account of a spiritual good and often cannot use external coercion, moral laws ought to be far more numerous than in a temporal society, which is accustomed to be physically armed. To this today is added the practical atheism of many public administrations. Wherefore:

1. Concerning ecclesiastical law these things must be held:

a) Unless there is a contrary sign, an ecclesiastical law prescribing or forbidding imposes an obligation of conscience, and one congruent with the matter;

A clause attenuating the obligation or even reducing the law to a penal one is customarily appended to modern constitutions of religious. The received opinion also of approved authors has attenuated the force of many rubrics, for example those which are to be observed outside Mass;

b) Signs of declared grave obligation are: alpha) Words which have great force: "we command, we interdict, in virtue of holy obedience, or by force of vow or oath, or we gravely mandate" [1]. The word "I command" is also adapted to light matter. beta) The persuasion of experts and the usage of the timorous, who estimate the matter in this way. gamma) Now, when it is a question of a universal law of the Church, the threat of a penalty either *latae* or even *ferendae sententiae*. For from c. 2218 § 2, we gather that the threat of a penalty is not made in the Code unless the Legislator has the matter of itself as grave and has willed to impose it as grave. For that canon declares immune from any penalty one who in the external forum has shaken off grave imputability from himself. Therefore, under this respect, the various divisions of penalties which were proposed before the Code can now be omitted.

2. Concerning civil law, controversies being omitted, these things seem able to be said prudently. The power of binding conscience is in no way lacking even to an ethnic or little-pious legislator. But more easily, because of the faculty of coercion, he can be content with an imposed penalty. And modern legislators, especially Parliaments, are accustomed to be little solicitous about guilt before God. Moreover, many subjects, even from among those who are reputed civilly honorable, utterly put aside this obligation of conscience; but it seems little consonant with equity that some should be pressed by a stronger burden of law than others. Again, however, the common good itself demands that certain laws be efficacious in conscience. Such are laws which more define the rights of private persons, for example the

> regulation of inheritance and the modes of acquiring goods; or which, in a matter where the legislator is competent, utterly extinguish certain obligations. Does not the common good require that the sentence of a judge be able of itself to be observed in conscience; that the same person of himself be owner before God and before law; that a "dualism" by which one answers otherwise in conscience and otherwise in the external forum be avoided in patrimonial questions? Moreover, law at the same time indicates what it is expedient or necessary to do for the common good. Wherefore circumstances can impose a moral necessity of doing what the law, even if of itself penal, has prescribed. Nor can an added penalty remove guilt which can be in an action from the object, from circumstances, from the end, and from the manner. Homicide remains morally evil, although it is punished by a most grave civil penalty: no one will doubt this. And attention must also be given to the declaration which can be contained even in civil law. Let us suppose that an edict is promulgated by public power by which certain acts of treason are noted and therefore punished with a most grave penalty. Can those acts, with attention to the most grave penalty of the external forum, be done without guilt of conscience? By no means. For besides the penal sanction, an edict of this sort contains an authentic declaration concerning the quality of certain acts. And treason itself is forbidden by the law of nature.

These things having been set down, these brief conclusions concerning the obligation of civil law can be proposed:

a) Today, according to a probable opinion, only those civil laws immediately oblige conscience which, because of the necessity of the common good, must have such force. This more often happens in laws which decree concerning rights than in those which directly prescribe or forbid something under penalty;

b) Nevertheless a law must be held as moral and not merely penal which by common estimation or by the judgment of several learned men is thought immediately to bind conscience. Cf. Lehmkuhl, I, 312. For custom is the best interpreter of laws; nor can it be denied that, after the immense war which will keep the name of "the great war," souls, from the perceived necessity of the common matter, incline more toward urging the obligation of conscience;

c) The gravity of an added penalty, especially of a fine, can sometimes, but not always, be an indication of a penal law, as if it should seem excessive for the guilty person at the same time to incur sin and such a penalty. This will especially happen when, as in merely fiscal laws, a pecuniary penalty formally compensates for the prestation owed;

d) More often than many think, circumstances bring it about that a law which is of itself penal must be observed in conscience. Thus, in time of war, it is by no means lawful for a duly enlisted soldier to desert the line of battle. Thus, when, to prevent or repel the scarcity of goods or their excessive price, citizens are ordered either to bring foodstuffs into common stock, or to be content with a moderated price, common necessity will easily impose these things in conscience;

e) What is said concerning the accidental obligation of religious rules from scandal, from subjective disorder of appetite, etc., must be transferred here also, proportion being preserved;

f) Yet we ought not urge civil laws, for example fiscal laws, beyond the way in which upright men are accustomed to observe them. But at the same time such observance must be inculcated upon all.

Moreover, the question will recur concerning various laws, and in the civil matter, it is especially moved concerning laws of taxes, hunting, fishing, and exterior police.

Finally, he who has violated a law from formal contempt of the legislator or of authority as such will have sinned gravely by that contempt itself: something else would have to be said if the thing prescribed is merely contemned because it is esteemed little or because it has not been rightly prescribed (Ballerini-Palmieri, *Opus theol.*, I, tr. 3, *De Legibus*, n. 303).

[1] Thus Busembaum, *De Legibus*, dub. IV, apud St. Alphonsus or Ballerini-Palmieri.

IV. - The Matter of Obligation

— What can be prescribed. 1. From the very notion of law it is gathered that the human legislator can prescribe all and only that which it is expedient to prescribe for the common good of the society over which he is placed. And matter reserved to the ordering of the power which rules a higher society must be excepted, such as pontifical authority is with respect to episcopal or diocesan authority, and ecclesiastical power toward civil authority.

2. Merely internal acts are excluded. For human law, since it is a common precept, affects individuals insofar as they are part of a visible society and therefore communicate socially with one another. Wherefore that power is necessarily of the external forum. Legislative power for the internal forum cannot be conceived unless as vicarious of God and to be exercised in the name of God: but no trace of such power is detected either directly from revelation or indirectly from the usage of the Church [1]. But internal acts, that is, acts which are completed in internal powers, do not pertain to social communication: through them we do not communicate with others. Therefore, whether it is a question of civil society or even of the Church, interior acts directly and according to themselves cannot be the object of human law. Thus St. Thomas, who applies this to any precept whatsoever of a Superior, using this reason, that man can neither bear judgment concerning another's internal acts nor efficaciously exact penalties [2]. And indeed, legislative, judicial, and coercive power are parts of one integral jurisdictional power, which therefore of itself is contained by the same limits.

Suarez, *Leg.*, l. 4, c. 12-13; Lugo, *De Fide*, d. 23, n. 6, 10; St. Alphonsus, l. 7, n. 34; d'Annibale, I, 200, also hold this. Yet there are not lacking today those who think that the power of prescribing internal acts must be conceded to the Church. Thus Ballerini-Palmieri, *Op. th.*, I, n. 390 ff.; Bouquillon, n. 110, whom Lehmkuhl, I, 221-224, favors.

Nevertheless:

a) Hidden acts are not excluded from human jurisdiction: they are hidden by accident;

b) By human power mixed acts can be commanded, which are composed of an exterior act and an interior act required either that the act be human, or that the act be juridically valid, or that it have the prescribed species. For unless you wish to erect a futile human power, it must be able to reach those things which integrate the exterior act. Thus he who is ordered to take an oath or administer a sacrament must have the intention of swearing or administering. He who is obligated to an act of

divine worship, for example to reciting the breviary, violates the human law itself if he has not conceived the intention essential to prayer. The worthy reception of the sacraments can also be prescribed by the Church;

c) An act which is capable of both modes, interior and exterior, falls under human precept by reason of the exterior mode which can be enjoined. Yet of itself it will be enough that the subject by an interior act do what he is ordered to perform. Thus a religious Superior, the Pope, can prescribe the application of Mass, since they can exact that the application be conceived by voice or in writing. But even an application made internally satisfies the law of itself;

d) The Church can attach a certain favor, for example an indulgence, to the condition of an interior act. Yet she is accustomed to exact some exterior act. Cf. concerning indulgences;

e) When a dogma is defined or an infallible moral declaration is promulgated, divine law itself imposes interior assent. But excommunication for merely internal heresy is not incurred. Cf. Lugo, *De Fide*, d. 23, n. 6, 10;

f) For the good of individuals, the Church has been endowed with a certain judicial and dispensative power of the internal forum, to be exercised in the name of God. While she uses that power, by absolution and dispensation, she absolves or remits even internal sins and internal vows. And in the same forum, where the cause is conducted between God and man, internal acts also can be prescribed.

Furthermore - this is the practical force of that opinion - what the Church cannot prescribe, she cannot fortify with a censure *latae sententiae*, or, if perhaps it becomes known, sanction by a judicial sentence.

Therefore those differ less from the doctrine handed down above who, with the approved authorities cited by Ballerini-Palmieri, I, 390 ff., distinguish directive force from coercive force, and attribute to ecclesiastical power only directive force over merely internal acts. Yet they use a little-effective argumentation. When they appeal to the end of ecclesiastical power, which is the spiritual good of souls, it is easily answered that, if it is a question of social power or of the external forum, the end is the spiritual good of souls to be procured through an apt social cooperation, but not through the direction of individual persons: this pertains to the internal forum, where human power is not legislative. Nor are the words of Christ to be pressed: "Whatever thou shalt bind," etc. For these must be accommodated to the nature of the thing, to the mission of the Church, and to the traditional sense; otherwise a direct power in temporal matters also would have to be acknowledged to the Church.

[1] Suarez, *Leg.*, l. 4, c. 12, n. 10.

[2] 1, 2, q. 91 art. 4; q. 96 art. 5.

V. - The Beginning of Obligation

— In canon 10 this rule is laid down: "Laws regard future things, not past things, unless provision is made in them concerning past things by name."

But a few things must be added concerning the application of the rule and concerning the exceptions by which it is circumscribed.

1. Concerning the application of the rule:

a) The application is clear when it is a question of a law merely prescribing or prohibiting. Acts done before were licit, and cannot constitute anyone guilty;

b) With respect to a penal law, the act of itself must be estimated by the law which was then in force. But derogation from this rule in favor of the accused is customary. Cf. immediately below;

c) The application is more difficult to a law which invalidates acts, makes persons incapable, or exacts conditions for the valid or licit celebration of an act. How is an acquired right to be defined, from which, in these cases, there must be no derogation? The discord of opinions concerning this matter is astonishing. From the principle handed down above, n. 173, acts remain valid if the conditions of capacity and form which were required when the act was done have been fulfilled. Yet concerning a revocable and easily repeatable act, such as a testament, the matter is controverted, so that one must act cautiously in this matter.

As regards the legal effects of an act, the effects produced up to the new law subsist; that is plain. But from the moment of the new law, the efficacy of a valid act will of itself have to be estimated from the new law. Suppose a law which changes the portion concerning which a testator is permitted to dispose freely, or introduces a new cause why agreements can be rescinded. That law will also rule prior agreements and testaments concerning an inheritance not yet devolved when the law is promulgated. The status of persons (insofar as it is defined by age and origin) is of itself ruled by the new law. Wherefore an adolescent who was fifteen years old when the Code began to be in force previously could validly take a wife. But from the Code being in force he will not be able to do this until he has completed the sixteenth year of age. Yet the marriage which, as is plain, he contracted before the Code when fourteen years old subsists. A minor does not retain under the new law (c. 93, § 2) a domicile which he had acquired under the former law.

Concerning the effects of agreements, this particular thing must be observed, that the parties, through the legitimate way of agreements, acquired for themselves rights which of themselves must remain untouched under the new law. Wherefore, even under the new law, the effects of agreements must be estimated from the law under which they were made.

2. Concerning the exceptions to the rule:

a) The procedural order (or order of judging) which is established by a new law is applied to cases born before the new law. For the new mode is presumed to be more perfect, and therefore is thought to be such that its use of itself is more useful to justice and to the litigating parties [1];

b) Because the accused is to be favored, can. 2219, § 2 establishes this rule: "Although a later penal law obrogates a prior one, nevertheless, if the delict, when the later law was made, had already been committed, the law more favorable to the accused must be applied; but if the later law removes the law or only the penalty, this ceases at once, unless it is a question of censures already contracted."

N.B. Many things in this matter remain doubtful and controverted, concerning which cf. juridical treatises. We add only this one thing: since a later law is presumed to be more perfect than the preceding one, in doubt one should rather answer in favor of it.

[1] Yet a moderation is tolerated, for example, in causes of beatification by way of non-cult, which were begun before the more severe new law.

§ 2. On the Authority of the People and on the Secondary Forms of Human Law

Certain things remain to be said concerning the authority of the people and concerning the secondary forms of human law. We shall consider here two secondary forms of human law: one, which is secondary with attention to the mode of promulgation, and is unwritten law or custom; the other, which accedes as a complement of the principal law, and is instruction or decree.

I. - On the Authority of the People

— Principle. The people, at least that people which, in a perfect society, either by God Himself, as in the Church, or by another legitimate constitution [1], is subject to the legislative power of those governing, as such, is not the legislator. Wherefore it must receive the law which has been made, nor does a law formally cease because it is not accepted. Wherefore also the people does not have the power to introduce a new law; nor is it the authentic interpreter of laws.

But from the reasonable or benign will of the legislator, it can do many things for the firmness and interpretation of constituted right, as also for the origin of new right.

[1] We say this because St. Thomas and the scholastics of themselves acknowledge political power in the multitude itself, as long as it has not been transmitted to the prince. Cf. St. Th. 1, 2, q. 97 art. 3 ad 3; 2, 2, q. 57 art. 2 c. and ad 2.

— I. The action of the people upon the firmness of law. The force of law does not depend on the acceptance of the people; and Alexander VIII reprobated this proposition 28: "The people does not sin, even if without any cause it does not receive a law promulgated by the Prince." Wherefore, when it is a question of a new pontifical law, bishops and inferior prelates ought to bring it into use. Nevertheless:

1. If they prudently judge that a pontifical law is less fitting for their dioceses, bishops are permitted reverently to open the matter to the Pontiff, and, while the response is awaited, meanwhile, by epikeia, to hold the law as suspended. We judge that this, because of parity of cause, also holds concerning an inferior prelate to whom the commands of a greater Superior are committed to be executed.
2. If a law is altogether harsh, which could not be observed without a great change and disturbance of things, the subjects themselves will be able either to appeal from an inferior to a superior power (yet not from the Pope to a Council, since a Council is not above the Pontiff), and meanwhile, from the prudently conjectured mind of the Prince or by epikeia, to hold the obligation as suspended. Cf. Ballerini-Palmieri, I, tr. 3, n. 293.

Yet of itself an appeal by which subjects appeal from the bishop to the Roman Pontiff does not suspend their obligation of obeying.

3. If it is sufficiently established that a law is neither actually observed by most nor will be observed, the Prince is not judged to wish to urge the obligation as regards the few of better will, so that they are excused from it. Besides, a legislator who knows that his law is not

observed by the greater part of the people and is silent about the matter is himself judged to revoke the law. Hence that celebrated saying: "Laws are confirmed by the morals of the people." But acceptance of the law by the people is to be presumed in doubt; and a legislator urging his law is of himself to be obeyed, because subjects each ought to follow their head rather than the remaining members.

4. The prudent discretion which can accompany the observance of law, and not rarely ought to accompany it, also allows this to happen: that if certain things received in dioceses and confirmed by usage are to be changed, the mandate of the Ordinary be awaited (Maschiat, *Prolegomena I. C.*, § IV, 22).

5. A law, from the will of the Prince itself, can formally be removed by desuetude or contrary custom. Concerning this matter, below.

— II. Concerning the power of the people in the interpretation of law. Although the people is not the authentic interpreter of the law to which it is subject, nevertheless the mode by which it observes the law is much more easily approved by the legislator, who, on account of the common good itself, is judged to accommodate his mind to that usage. Wherefore in c. 29 it is said: "Custom is the best interpreter of laws."

— III. Concerning the power of the people in the origin of a new law. The people cannot introduce a truly obliging law except through custom. We must now treat of this.

II. On Custom

— I. Notion and conditions. Custom, as a thing of fact, is a frequent mode of acting and an inclination arising therefrom to act similarly. That fact sometimes brings forth custom as a thing of right, which is defined: right introduced by the long-standing morals of the people. For this to happen, various conditions are required, that is:

1. Some consent of the legislator, without which there is no law. The Code expressly establishes this concerning ecclesiastical custom: "Custom in the Church obtains the force of law solely from the consent of the competent ecclesiastical Superior" (c. 25). But that consent is not necessarily special, formally given to such or such a usage; general consent suffices, which is called legal, and is contained in a law by which customs furnished with certain endowments are generally held as ratified. Thus c. 27 acknowledges customs contrary to law, c. 28 customs beyond law; but canon 29 expressly commends customs which interpret law.

Nothing such occurs in modern civil right, by which customs contrary to law are of themselves rejected. Yet the civil legislator does not have the power to avoid every force of custom. And thus there are forensic customs which are a reason for magistrates to settle lawsuits outside all written right.

2. The people, as the subject of custom. When it is a question of a custom which has the force of law, there is required "a community which is capable at least of receiving ecclesiastical law" (c. 26), that is, a community for which a law is made. It is not enough that a law can be made concerning it. Cf. what was said above, n. 171. Such is the universal Church, a diocese, a religious Order, and its province; but not a parish or a religious house which is not a

monastery of its own right. In the examples adduced, to every community capable of custom there is added a special legislative authority. Thus a bishop can establish diocesan laws, and a religious Order can establish constitutions or decrees for the Order. And there are provincial chapters, yet not of all or of most religious institutes, which establish proper ordinances of the province. But neither a cathedral chapter [1] nor a pastor nor domestic authority establishes special right for a parish or house.

3. The morals of the people, that is, frequent, uniform, public, deliberate acts of the greater part of a community of this kind, so done that in the people there is a certain inclination toward them which the legislator would not oppose without some disturbance of the people. This inclination of itself will not be lacking where it is a question of abrogating a law; but where the question is of introducing an obligation, acts knowingly done (or without error of law), with the intention of obligating oneself, will very rarely be had; yet this, from c. 28 itself, is then required.

4. A long duration of time. Before the Code, a probable opinion was content with the space of ten uninterrupted years. Yet the Code, cc. 27 and 28, wills that a custom which introduces a new obligation or derogates from law be legitimately prescribed through forty continuous and complete years. But against a law which has prohibited future customs, only a centenary or immemorial custom can prescribe (c. 27). Cf. immediately below, n. 262, c.

Yet no time is required in a custom which the legislator tacitly approves and which is said to be by connivance. For then custom promulgates his own lawmaking will. Such is easily the usual interpretation of a law, from c. 29, which shows the favorable will of the legislator.

5. Reasonable morals, that is, such that although they are contrary to the present law, they can be sanctioned by the legislator as useful to the community. For since a community can often be led to its common good by two or more modes, it is not repugnant that a law and a contrary custom are both reasonable.

But usages cannot be reasonable which are repugnant to natural law or positive divine law (c. 27), or which break the nerve of ecclesiastical discipline, or provide license or occasion for sinning.

"A custom which is expressly reprobated in the law is not reasonable" (c. 27, § 2). Yet it can happen that, circumstances having changed, it afterward becomes reasonable.

[1] Capitular statutes are rather conventional. Cf. Wernz, *Ius Decretalium*, I, n. 94, against Bouix, *De capitulis*.

— Corollaries or scholia. 1. Custom differs formally from written law, not by the origin of obligation, not by efficacy, but by promulgation alone.

2. It differs from prescription properly so called, because prescription affects only private rights, but custom affects the very objective right of the community; because any private man prescribes unto his own private good against the private right of another, while the active subject of custom is the people; and custom is properly prescribed against no one, since it is valid from the will of the legislator; because prescription, but not custom, generally exacts good faith. Yet because of the continuous use and the space of time which custom requires, it becomes the object of prescription, and there is speech of a prescribed custom.

3. The nature of the thing is not changed when custom is reported in a written document, unless the writing itself is formally promulgated.

— II. Division. a) From efficacy or effect, custom is distinguished as according to law, beyond law, and contrary to law.

The first, which is also called inhesive, declarative, consists in the very common observance and therefore confirmation of the law.

Custom beyond law introduces an obliging norm which is opposed to no preceding one. Thus the obligation of the breviary, which now for the first time, by canon 135, has been promulgated in writing to all clerics of major orders. Thus many customs which explain the sense of an obscure law.

Custom contrary to law removes a preceding right in whole or in part. And observe that there is this difference between custom and the law of a particular legislator, that a special custom can derogate from a common law, while a particular legislator can do nothing against common right. For custom draws its force from the will of the universal legislator;

b) From extension, one custom is general, another special or particular. In ecclesiastical right, that which belongs to the whole Church is sometimes called most general; that which belongs to one ecclesiastical province or kingdom, general; that which belongs to a lesser community, special.

To special custom is referred the style of the curia, or the uniform mode either of deciding certain causes or of proceeding in the examination of a cause. It is said more strictly of a tribunal than of an administrative curia. A style of this kind, when it is used under the eyes of the Legislator, easily takes on the value of custom by connivance;

c) From duration, one custom is ordinary, or of long time; centenary, or of very long time; and immemorial, whose origin escapes at least common memory. For the proof of this, in canon law, it is required that witnesses by sight depose that they have seen the practice for forty years, and by hearing, that they have received from their elders that the same has always been observed.

Centenary and immemorial customs are privileged customs.

And although an immemorial custom surpasses a centenary one, in the Code they are practically equated. Cf. cc. 5 and 30, where both are excepted from the suppression made by the Code or by laws of contrary customs; c. 27, where both are said to be able to derogate from a law which prohibits customs; c. 63, where both are said to introduce the presumption of a conceded privilege. Therefore whatever can be obtained by privilege can be obtained by customs of this kind. Yet a clause which abolishes centenary customs does not yet touch immemorial customs.

N.B. Observe from St. Alphonsus himself, l. 3, n. 290, that "if it is probable that there is a custom," practically the obligation of the law to which that custom derogates ceases. Cf. Lehmkuhl, I, 189.

— III. Cessation. 1. Custom ceases intrinsically if it has become unreasonable. 2. Extrinsically, it ceases both by a contrary custom legitimately prescribed and by a law which suppresses it. Concerning that law these things must be held. A particular law abrogates particular contrary customs. And therefore, although customs are in force by the force of a general law permitting and sanctioning them, a bishop, in a matter where he is competent, can by diocesan law abolish diocesan customs [1]. A general law does not obrogate particular customs, unless it expressly provides this, as if

it should say, "no contrary custom notwithstanding." For the clause "notwithstanding contrary custom," according to the interpretation received before the Code, is not yet judged to abrogate any custom other than a general one. But unless express mention has been made of them, a clause revoking any custom whatever does not suppress centenary or immemorial customs (c. 30). Nor is an immemorial custom removed by a clause which mentions centenary ones alone. Yet both are taken away by a clause which declares contrary customs to be corruptions.

In certain arguments, for example of rites, whose uniformity is greatly urged, the Holy See more difficulty admits that a custom which is opposed to liturgical law can be reasonable. Yet not every negative response to the question, "Can such a custom be tolerated?" demonstrates that the custom was previously unreasonable. For the Holy See could have used the occasion of the question to abrogate the custom positively.

Concerning previously existing customs which are contrary to the statutes of the Code, this particular thing is decreed by c. 5: all are abolished, unless the Code expressly provides otherwise, or unless they are centenary and immemorial. These, provided the Code has not declared them corruptions, "will be able to be tolerated, if the Ordinaries, according to the circumstances of places and persons, judge that they cannot prudently be removed." Those words invite Ordinaries to try to abolish them; but if they themselves have positively done nothing, they seem tacitly to connive at the custom, which therefore will continue to be in force. That is, that a former custom be tolerated, no positive action of the Ordinary seems necessary.

[1] Cf. Aichner, *Comp. iuris can.*, p. 33.

III. - On Instruction or Decree

— Notion. The more principal and general definitions of right must be completed by secondary and more particular dispositions by which provision is made for the execution of the former. Those determinations can be contained in the law itself; but not rarely they are reserved to a certain less solemn form of an obligatory norm, which in canon law is called by the name of instruction, but in civil law rather royal decree or decree of the president of the commonwealth. Therefore, in civil law it proceeds from a power distinct from legislative power, which is called administrative or executive. But in canon law instructions are made through the same Congregations which the Supreme Pontiff has not rarely used for establishing laws.

Instruction indeed of itself denotes a simple declarative norm, whose direction is to be observed, rather than its literal observance is to be urged. Thus, on 19 September 1671, the Sacred Congregation of Propaganda Fide said that the resolutions of the Holy Office and Propaganda Fide were communicated by it "not as definitions, but as simple instructions," by which, in occurring doubts, they could and should be governed [1]. Yet not rarely certain points, especially secondary ones, are defined and imposed authoritatively by instructions. Thus, the Instruction of the Holy Office of 7 June 1867 imposed a stricter notion of quasi-domicile than was being handed down by the most approved authors: yet the competence of a pastor to assist at marriages then depended on that notion. Thus, when the death of a prior spouse must be proved, the instructions of the Holy Office of 13 May 1868 and 29 August 1890 are to be followed. Wherefore Wernz, I, n. 146, III, only warns that we not attribute the force of universal law to all instructions.

That distinction between laws and instructions is clearly rendered in the Motu Proprio *Cum Iuris canonici*, 15 September 1917, by which Benedict XV reserved authentic interpretation of the Code to a special Commission. For it has this to our matter: the Sacred Roman Congregations are not to issue new general decrees now, unless... Therefore their ordinary office in this kind will be both to care that the prescriptions of the Code are religiously observed, and, if the matter bears it, to issue instructions which bring greater light to the same prescriptions of the Code and produce efficacy (A.A.S. 1917, t. 9, p. 483). It also happens that general chapters of regular Orders mandate that instructions be made by the Superior general.

To give examples, the *Normae de sacra praedicatione*, which the Sacred Consistorial Congregation established on 28 June 1917, acceded as an instruction to the encyclical letter *Humani generis*, 15 June 1917 (cf. A.A.S. 1917, t. 9, pp. 318 ff. and 305 ff.).

Recently, to its responses concerning the force of the general decree *Inter reliquas*, 1 January 1911, on religious bound to military service, the Sacred Congregation for Religious added a true instruction (A.A.S. 1919, t. 11, p. 321 ff.).

Now further, these instructions and royal or presidential decrees are directed to the same community for which the law is destined, and they obligate it likewise. Yet these differences stand between laws and complements of this kind: 1. that they cannot derogate from the law which they complete; 2. that therefore, if certain things cannot be composed together, the law, although prior, is to be preferred to the later instruction; 3. that, when the law has been suppressed, the instruction, as accessory, must cease together with the principal.

N.B. Beware lest you confuse decrees of the civil executive power with general decrees of the Sacred Congregations, which are often true laws made in a less solemn form.

[1] *Collect. Paris. Constitutiones S. Sedis*, n. 5.

Article II: On Ecclesiastical Law

Usefulness. - Since ecclesiastical laws are accustomed to oblige conscience directly, and not rarely, because of moral matters, the Roman Curia must be approached, canonical notions concerning these laws and concerning the Roman Curia are necessary for the moral theologian, according to that saying: a moralist without law can do nothing.

Order of speaking. - In this article we complete the things which above we wrote both concerning laws in general and concerning human laws. For many things must be indicated which are more proper to ecclesiastical law. But this will be the order of speaking: that first we place those things which affect the law itself in itself; then those things which regard the subject of the law; then those things which concern the author of the law (which will be the occasion for briefly explaining the ecclesiastical hierarchy); afterward those things which pertain to the interpretation of law; finally those things which regard dispensation from law. To this last argument a brief dissertation on rescripts and on the Roman Curia will be connected.

§ 1. On Ecclesiastical Law Considered in Itself

— I. The name and form of ecclesiastical law. 1. Because of the absolute power which the Supreme Pontiff enjoys, he is held to no certain form to be observed in establishing law, so that he can

establish law even by an oracle of the living voice. Nor are inferior legislators bound by any universal disposition to write the law. But according to the use of the various form, the name by which the law is customarily called also varies.

By the generic name of Apostolic Constitutions all pontifical laws can be designated. More strictly, an Apostolic Constitution is called a law which is contained in the more solemn form of a Bull. A Bull is already recognized by the inscription alone. For it is inscribed: "Pius, bishop, servant of the servants of God." But a Brief or letters in the form of a brief have as their proper conclusion that they are said to be given under the ring of the fisherman. Encyclical letters are recognized from the persons named to whom they are directed, if they are destined for some universality of persons, especially of bishops.

To indicate the spontaneous origin of a law, it is said to be made *motu proprio*. And those words are written at the head of the document.

Decrees, especially general decrees, are called laws which the Supreme Pontiff makes either in a general Council or through the Roman Congregations.

Decretal letters or responses of themselves take occasion from another's report. Rescripts are akin to these, by which another's petition is satisfied. These are accustomed rather to define particular cases. The terms Decrees and Decretals are not rarely used promiscuously.

Those things which are issued by living voice are usually Consistorial Allocutions, or speeches which the Supreme Pontiff has held in Consistory.

Finally, individual ecclesiastical laws which are contained in a collection, for example in the Code, are rather called canons, while the individual prescriptions of civil law are named articles.

A statute is a term more proper for designating laws made by a power inferior to the Supreme Pontiff: episcopal, diocesan statutes; or even ordinances of the internal governance of a collegiate moral person: capitular statutes. Yet the laws of councils rather retain the name of decrees: Decrees of the Council of Baltimore.

— II. Promulgation. Neither the Supreme Pontiff, with attention to his absolute power, nor a bishop or other ecclesiastical legislator, with attention to common right, is bound to observe a special form of promulgation.

Before the Constitution *Promulgandi* of Pius X, 29 September 1908, the more solemn pontifical laws were promulgated by affixing them in certain places of the City (at the doors of the Vatican Basilica and in the Campo de' Fiori); others by the very divulgation which they obtained through periodicals; and it was asked whether a promulgation made in the City was valid for the whole world, or whether a distinct promulgation had to be made in the dioceses. This was already commonly denied.

After the aforementioned Constitution and c. 9 of the Code, "laws made by the Apostolic See are promulgated by publication in the official commentary *Acta Apostolicae Sedis*, unless in particular cases another mode of promulgating has been prescribed."

Episcopal laws are generally promulgated in a diocesan synod, whence they are called synodal statutes. Decrees which are made outside synod are customarily promulgated either by insertion in the diocesan sheet, or by public pronouncement in a church.

— III. Vacation. Some pontifical laws by their nature begin to oblige at once. Thus it cannot be conceived that a definition of faith or declaration of divine right, once promulgation has been made, does not immediately oblige subjects.

Concerning disciplinary laws, unless something else was expressly provided, a probable opinion, before the Code, from the norm of Roman law (Nov. 66, *Ut factae*), admitted in provinces or dioceses a vacation of two months. Yet invalidating laws were not judged to be vacating.

Now from the clear disposition of the Code, c. 9, laws of the Holy See "exert their force only after three months have been completed from the day which is placed on the issue of the *Acta* (Apostolicae Sedis), unless from the nature of the thing they bind at once, or in the law itself a shorter or longer vacation has specially and expressly been established." In diocesan laws no vacation of itself is required.

— Of itself that vacation affects laws of mere concession or permission no less than those directly obliging. Yet it easily happens that, by a certain voluntary action, subjects immediately use a favorable law after its promulgation has been made: and the legislator himself, unless he has expressly said otherwise, seems tacitly to consent to that prompt docility. Thus, in a liturgical matter, in which a certain variety is accustomed to please, use was immediately made in the City of the new prefaces of St. Joseph and for the dead. And who would think that the use of a promulgated indulgence must be delayed for three months?

— IV. Extension of law. 1. Of itself, a universal law obliges all the faithful. Yet Orientals are not held by disciplinary pontifical laws unless from the words or nature of the law something else is established. This is expressly established concerning the Code of Canon Law by c. 1. Yet they can gain the indulgences of the Latin Church [1]. A particular law obliges the community or region for which it was made.

2. When a community is defined by territory, individuals of themselves are not obligated except insofar as they are part of the community existing in such a place; and therefore not outside that territory. Wherefore c. 8 § 2 says: "A law is not presumed personal, but territorial, unless something else is established." Yet insofar as this is expedient for the common good, personal laws can be made, either for a certain class of citizens, for example for clerics, or for all. "If something which an absent person does or omits outside harms in the homeland" [2], he will be held by the law. It is the case of a law which prescribes presence itself in a place. For example, a pastor absent from his parish or from the diocesan synod will not be formally excused because he is staying outside the diocese. Wherefore he could also be punished with excommunication.
3. From c. 10, already recalled, "Laws regard future things, not past things, unless provision is made in them concerning past things by name."

[1] Cf. resp. S. Paenit., 7 July 1917, A.A.S. 1 Aug. 1917 (IX, 399), or *Periodica*, IX, p. 67.

[2] d'Annibale, I, 205.

— V. The force of law. 1. Although laws can often make contrary acts invalid, "only those laws are to be held invalidating or incapacitating by which either the act is expressly or equivalently established to be null or the person to be incapable" (c. 11).

2. Those who labor under invincible ignorance are of themselves excused from the law and escape penalties. This also can be understood more benignly in ecclesiastical law from cc. 2199; 2202, § 1; 2218, § 2; 2229. Cf. what was said in n. 63. Nevertheless, since invalidating or incapacitating laws are judged to have been especially made on account of the common good, "no ignorance of invalidating or incapacitating laws excuses from the same, unless something else is expressly said" (c. 16 § 1). Moreover, in the external forum, ignorance of law is not presumed, but must be proved (c. 16 § 2).

3. By canon 15, according to the maxims of simple probabilism, it is expressly established: "Laws, even invalidating and incapacitating laws, do not urge in a doubt of law." Understand a doubt as reasonable or prudent. What a doubt of law is, cf. above, n. 55.

Wherefore an authentic interpretation which explains a doubtful law must be promulgated, in order that it may oblige (c. 17 § 2).

But in a doubt of fact, the Ordinary can dispense in the law, provided it is a question of a law in which the Roman Pontiff is accustomed to dispense (c. 15).

— VI. The duration of law. Laws which either by their nature or by an express clause are not temporary remain until they are revoked. Moreover, "a later law obrogates an earlier one, if it expressly declares this, or is directly contrary to it, or orders anew the whole matter of the earlier law from the beginning" (c. 22).

Nevertheless "a general law in no way derogates from the statutes of special places and of individual persons, unless something else is expressly provided in the law itself." Therefore, with attention to those words, which are taken from c. *Licet*, I, *De Const*. in 6° (I, 2), unless an abrogating clause is inserted, the episcopal statutes themselves are not taken away by a later general law. But, indeed, a clause of this sort will not be omitted.

Concerning the Code, however, the peculiar disposition of canon 6 has this effect, that it abrogates any opposed laws, whether general or particular, unless something else is expressly provided concerning particular laws. Indeed it even took away contrary customs, except immemorial or centenary customs, which, from c. 5, can be tolerated in the way that has been said.

But observe from c. 22 that an earlier law is obrogated through a later law of the same extension, not only when this is expressly said or when it is directly contrary to the earlier law, but also when it orders anew the whole matter of the earlier law from the beginning. The reason is that it is of itself contrary to the common good that subjects should have to bear a twofold ordering, as it were parallel, of the same thing. This also is the reason why we say that many decrees concerning a matter which is ordered by the Code have been suppressed.

§ 2. On the Author of Ecclesiastical Law

I. - Notions Concerning the Ecclesiastical Hierarchy

— Hierarchy means the same as sacred principate or ecclesiastical power. But subjectively it designates the order of persons who participate in that power in various degree. A twofold hierarchy is distinguished, according to the twofold power which belongs to the Church: the power of order and the power of jurisdiction.

The hierarchy of order consists of bishops, priests, and ministers.

The hierarchy of jurisdiction strictly embraces only those persons who possess ecclesiastical jurisdiction in the external forum, and possess it in a certain perfect grade, i.e., one which comprehends legislative, judicial, and coercive power. Less strictly it is constituted by all persons who participate in some jurisdiction of the external forum.

Each hierarchy is of divine origin; but as to the persons in whom it exists, the hierarchy, at least of jurisdiction, is participated by some by divine right, by others by human right, and this either by ordinary right or by delegated right. Finally, one is in a college, another in an individual person.

By divine right jurisdiction is possessed by the Roman Pontiff, by bishops (in general, insofar as Christ wills that in the Church there be a grade of episcopal jurisdiction), and by a general council with the Pope. The other jurisdictions are of human right.

These grades, moreover, must be indicated.

— I. The Supreme Pontiff, to whom the fullness of power belongs, with jurisdiction also immediate over all the baptized.

To exercise his universal jurisdiction, he uses the Sacred Congregations, Tribunals, and Offices of the Roman Curia; to prove and exercise his immediate jurisdiction, he sends Legates. These, in extraordinary circumstances, are Legates *a latere*; but in ordinary circumstances, Nuncios or Internuncios, if at the same time they represent the Apostolic See before the civil government; Apostolic Delegates, if merely in the territory assigned to them they must observe the state of the churches and report on it to the Roman Pontiff (c. 267); to fulfill his office of spreading the Gospel he uses Apostolic Vicars, Apostolic Prefects, or Superiors of missions in a prefecture not yet erected.

Moreover, in regions separated from a diocese, he constitutes Abbots nullius or Prelates nullius (understand: of a diocese). And in the dioceses themselves he also communicates jurisdiction to Prelates of clerical religions, which at the same time, by a general reason prudently tempered, he has made exempt from episcopal jurisdiction.

The subject of the same universal power, inadequately distinct from the former, is the Ecumenical Council, which the Supreme Pontiff alone convokes, directs, and closes.

— II. Residential bishops with perfect ordinary power govern a diocese under the authority of the Roman Pontiff. He, saving special concessions, freely names the same. Before they begin to exercise the office of ordinary and immediate pastor, they must take possession of the diocese; this requires that, by themselves or by a procurator, they show the apostolic letters to the chapter of the cathedral church, or, if this is lacking, to the episcopal council (c. 334).

Besides residential bishops, there are titular bishops, to whom an ancient see is assigned as a title, which now belongs to places of the missions. Those places are administered through Vicars or Prefects, so that titular bishops enjoy no power in the church from which they borrow the name.

In the diocesan curia there occurs the Vicar General (in large dioceses two or more are constituted), named by the bishop, who participates in the ordinary power of the bishop. He is also called the Ordinary of the place [1], and, except for affairs which require a special mandate or which the bishop has reserved to himself, he can do those things which pertain to the ordinary power of the bishop,

and also, for the most part, those things which are conceded to the bishop by faculties received from the Holy See.

The bishop must also name a chancellor, who takes care of the diocesan archive, and by that very fact is a notary (c. 372); and an Official with ordinary power of judging (c. 1573).

In administering the diocese he is assisted by the chapter of the cathedral church, whose counsel at times, at other times whose consent itself, he must seek. That chapter is composed of canons.

Diocesan consultors in dioceses where a chapter is lacking supply the place of this chapter for the governance of the diocese (c. 427).

Dioceses have customarily been divided into various districts or deaneries, over which a Vicar Forane or Dean is placed. He must hold conferences of the clergy and, in the manner prescribed to him by the bishop, watch over the discipline of his district.

But in the spiritual care of his diocese, the bishop obtains as cooperators pastors, to whom a distinct part of the diocesan community is entrusted to be cared for. That part for the most part and of itself is distinguished by territory; there are, however, personal parishes, which are constituted for persons of a certain origin, of a certain rite, indeed of a certain family. Assistant vicars, or cooperators, are often present to pastors.

The diocesan synod, which the bishop must celebrate at least every ten years (c. 356), and by which he gathers his clergy, is not properly a council, since the bishop alone there establishes or promulgates his statutes.

When the episcopal see is vacant, the ordinary authority of the bishop passes into the cathedral chapter, or, where there is no cathedral chapter, into the assembly of diocesan consultors (c. 427). Within eight days the chapter, or that assembly, must constitute one capitular Vicar, and transfer all its jurisdiction into him.

[1] Thus c. 198 expressly has it. Sometimes, however, the context shows that only he who is the head of a diocese or region is designated by this name.

— III. Several bishops make up an ecclesiastical Province, over which a Metropolitan or Archbishop presides, with power limited to the cases contained in law. He is the judge of appeal, and, in defined cases, supplies for negligent bishops. Provincial bishops are called suffragans of the Metropolitan.

The Metropolitan himself once and for all must, with the Apostolic See approving, designate the local Ordinary to whom appeal is made from causes which in the first instance were treated before the Metropolitan (c. 1591).

A provincial Council, of which the most important part is the bishops of the province, although others also must be called, is to be celebrated at least every twentieth year; and bishops *sui iuris*, or those who immediately depend on the Supreme Pontiff, must choose the metropolitan whose provincial council they themselves attend [1].

In the Western Church, Patriarchs and Primates bear merely an honorific title. Not so in the East, where Patriarchs, under the Supreme Pontiff, are the supreme pastors of some rite.

[1] The same must be done by an archbishop who is not a metropolitan, or who has no one as suffragan, as for example the archbishop of Catania.

— IV. The Ordinaries of several ecclesiastical provinces can come together in a plenary Council, after permission has nevertheless been sought from the Roman Pontiff, who designates his Legate to convoke the council and preside over it (c. 282).

II. - Who Can Make Laws in the Church

— 1. For the universal Church, the Roman Pontiff, whether alone or in an Ecumenical Council. He is bound by no special form. Sometimes he makes laws through the Roman Congregations themselves, concerning which below, in the appendix on the Roman Curia.

2. Within the ambit of a general or particular mandate, Legates of the Supreme Pontiff and the Sacred Roman Congregations, for example, the Sacred Congregation for the Propagation of the Faith in the territory subject to it. We shall treat of these Congregations in the appendix on the Roman Curia.
3. For the territory of each, the plenary Council and the provincial Council. But the decrees of either Council, before they are promulgated, must have been reviewed by the Sacred Congregation of the Council.
4. For their diocese or quasi-diocese, bishops and prelates of similar jurisdiction: Prelates nullius, Apostolic Vicars and Prefects.
5. For the diocese also, when the See is vacant, the Chapter of the cathedral church and the capitular Vicar: insofar as there is need, and with nothing innovated.
6. For the religion subject to them, the general chapters of regular Orders and of exempt clerical religions. Congregations or general chapters of lay or non-exempt religions are without jurisdiction. They establish ordinances, which for the most part are not perpetual, but are in force until the next chapter, by the force of a certain domestic or dominative power, which is measured according to vows or promises made (Cf. Wernz, t. 1, n. 94).

What particular chapters or the supreme Prelate alone can do must be gathered from the various Constitutions. In the Society of Jesus, the Superior General can establish ordinances which, although they are not of the same grade as the decrees of general Congregations, nevertheless have the force of law to some extent; while in the same Society and in many religions, provincial congregations are destitute of all jurisdiction.

— You ask what laws can be made by bishops?

Bishops by their laws can establish nothing against common law or against the decrees of a plenary or provincial council. Wherefore, unless the superior law itself expressly grants this, they can neither prohibit what law expressly permits, nor permit what it prohibits, nor order matters which are reserved to the Holy See. Therefore this power of bishops has this scope, that they determine more particularly the more universal laws of the Church and apply them to the diocese. Cf. Wernz, II, n. 756.

Those laws can be made both within and outside a synod. The things which are ordered in synod are judged to be true laws; but those which are promulgated outside synod, according to a sufficiently approved opinion, are rather regarded as precepts, unless they affect all diocesan persons, or unless

the bishop has clearly signified the mind of establishing a law [1], for example, for the Clergy. Cf. Lehmk. I, 213.

Observe that synodal statutes are subject to no Roman review.

[1] This will now happen more easily, since synods are to be assembled much more rarely than before the Code. By the Council of Trent annual meetings were established.

§ 3. On the Subject of Ecclesiastical Law

I. - On Universal Laws

— I. Principle. Universal ecclesiastical laws of themselves oblige all the baptized who are habitually capable of reason. For human law cannot reach those to whom the use of reason is lacking. Wherefore neither unbelievers nor catechumens are obligated by the precepts of the Church.

— What of baptized heretics or schismatics?

a) No question is raised concerning those who by a recent apostasy have gone over to the non-Catholic camp, or have professed unbelief. These, by their own fault, have deprived themselves of the goods of ecclesiastical communion; nor can they report from their rebellion the benefit of exemption.

b) But others belong to sects established long ago by quasi-birth itself or by education in infancy, so that a far greater presumption of good faith must be said to profit them.

The controversy which arose concerning them after the pseudo-Reformation of the sixteenth century seems able to be solved briefly in this way.

Some ecclesiastical laws have been directly constituted to protect public order and the common good of Christian society: such are the laws concerning the form and conditions of marriage. Heretics and schismatics are of themselves subject to those laws. Nevertheless, by a positive concession, which was first made general by the decree *Ne temere*, 2 Aug. 1907, and now is confirmed by c. 1099 of the Code, non-Catholics who contract among themselves are nowhere held to observing the Catholic form of marriage. But they must be said to be subject to ecclesiastical impediments, except disparity of cult from c. 1070.

Other laws directly intend the sanctification of individual persons. There are various precepts and prohibitions concerning the observance of feasts, concerning fast, abstinence, books to be published or read, etc. Baptized non-Catholics have the title of subjection in baptism. Is it the mind of the Church that we should hold them as exempt? A positive indication is lacking. Indeed, c. 87 indirectly manifests the contrary mind of the Church. For after it has said: "By baptism a man is constituted a person in the Church of Christ, with all the rights and duties of Christians," it immediately adds: "unless, as regards rights, there stands in the way an obstacle impeding the bond of ecclesiastical communion, or a censure laid by the Church." Therefore the law seems to deny that anything stands in the way of duties. Nor is a general dispensation necessary for sparing many sins: for by ignorance or by persuasion of immunity from formal sin there are excused not only those who adhere in good faith to a heretical sect, but also, at least of themselves, others who remain in a non-Catholic sect with doubtful or bad faith.

Nevertheless it seems to be according to the mind of the Church that today Catholics, in their civil dealings with non-Catholics of whom we are speaking, should not be held back by scruples of cooperation in acts which, on account of ecclesiastical prohibition alone, are materially evil.

Therefore we shall say: saving the positive exemption from the form of celebration of marriage, non-Catholics are bound by ecclesiastical laws, even merely preceptive ones. Nevertheless, with non-Catholics whose marriage Catholics know to be invalid on account of an impediment of ecclesiastical law, Catholics will deal as with putative spouses, in regions where non-Catholics enjoy every civil right; and they will readily furnish those things which heretics desire against positive law unknown by them; yet they will not induce them to violate those precepts.

We allow its probability to the more benign opinion, which judges non-Catholics to be truly exempt from these precepts. Wherefore we admit with Frassinetti that heretics, when they are converted to the true Church, are not to be interrogated about violated precepts of the Church concerning Sacred Times. Yet distinguished writers who report the benign opinion, Lehmkuhl, I, 228; Noldin, I, n. 147; Prummer, *Manuale*, I, n. 186, warn that it is forbidden to Catholics to induce non-Catholics to act against the law.

— What of those who are doubtfully baptized?

1° In the external forum, if it is established at least probably that baptism was conferred, baptism is presumed valid, and therefore gives the rights of Christians and imposes the duties. If the fact itself is not established, recourse will be had to presumptions. These failing, that principle will remain to be applied: *A fact is not presumed but proved*.

2° But in the internal forum, presumptions are not necessary. Wherefore, if baptism is only probable, we shall use this principle, that no one is held by an uncertain precept. That solution is confirmed by the very reason of equity. For, in his whole spiritual life, a man only probably baptized can promise to himself no certain fruit of absolution, the Eucharist, etc. Why would you make burdens more certain than advantages? Ball.-Palm. I, tr. 3, c. 2, n. 335 incline to this side, against Lehmk. II, 426, and Ill. D. Magnaiolt, in his learned discussion of this argument. Cf. our *Epitome iuris can.* I, § 1.

— "By merely ecclesiastical laws there are not held ... the baptized who do not enjoy sufficient use of reason, nor those who, although they have attained the use of reason, have not yet completed the seventh year of age, unless something else is expressly provided by law." Therefore:

1° The habitually insane are immune, to whom, therefore, on days of abstinence meats may be offered.

But what if they have lucid intervals? Of themselves, indeed, they are held by laws; but since c. 88, § 3 expressly establishes: "To infants are assimilated all who are habitually destitute of the use of reason," we can consider them as simply exempt even through lucid intervals.

Nevertheless c. 2201 must be observed, which pronounces incapable of delict only those who actually lack the use of reason. For penal laws, although they are of strict interpretation, protect public order more directly.

Moreover those remain subject to laws and are excused by ignorance alone who labor only under accidental or temporary insanity.

2° All are immune who, by reason of age, have not yet attained ready use of reason. Such persons from can. 88 are judged to be impubes persons who have not yet attained a full seven years. Indeed, by the positive sanction of c. 12, although they may have attained the use of reason, they are not obligated by ecclesiastical laws before the completed seven years, "unless something else is expressly provided."

The exceptions are: the obligation of Paschal communion, from c. 859, § 1; of annual confession, from c. 906.

And it is expedient that, insofar as it can reasonably be done, children from tender years be accustomed to observing the laws of the Church.

— From c. 2230, impubes persons are excused from penalties *latae sententiae*. Before the Code, however, the received interpretation, founded on cc. *Pueris* and *Referente*, 1 and 2 *De delictis puerorum* (V. 23), equated girls and boys in this matter, so that, in order to delict, the common age of puberty was established as fourteen years. From c. 6, 2° and 3° this interpretation seems even now able to be sustained. Cf. Genicot-Salsmans, II, 566.

— From c. 1254 § 2, from the law of fasting are exempt all who have not yet completed the twenty-first year, and all who have begun the sixtieth.

II. - On Particular Laws

— Preliminary matters. In order to discern who are subject to laws which have been enacted for a particular territory, one must distinguish inhabitants (*incolae*), newcomers (*advenae*), travelers (*peregrini*), and vagi. On these there is c. 91. "A person is called: an inhabitant, in the place where he has domicile; a newcomer, in the place where he has quasi-domicile; a traveler, if he is staying outside the domicile and quasi-domicile which he still retains; [1] a vagus, if he has domicile or quasi-domicile nowhere."

Therefore, since this division of persons is taken from domicile or quasi-domicile, the notions of ecclesiastical domicile [2] and quasi-domicile must here be set forth. Ecclesiastical, I say.

In civil law they are accustomed to distinguish domicile from residence. Some laws, thus English, Belgian, French, Italian law, acknowledge for the same person only one general domicile, while other laws, thus Roman law formerly and now German law (Code art. 7), do not exclude a plurality of domiciles. Therefore the Code of Italy (art. 16), imitating the Code of France, defines domicile as the place where someone has the principal seat of his affairs and things, while from the Code of Germany domicile is had wherever there is residence with the will of stable abiding.

Civil laws are moreover accustomed to permit that, for the transaction of certain affairs, a particular domicile be chosen, in which the parties can judicially be summoned and sued. Thus industrial societies are accustomed to establish for themselves a domicile which is called the social seat (*le siege social*).

The same canonical Code permits this in c. 1565 § 2, although it abstains from the name of domicile for designating the place chosen by contract in which the contracting parties can be cited and sued.

In the common notion, domicile designates the stable seat or habitation of someone. But in law necessary domicile and voluntary domicile are distinguished.

Necessary or legal domicile, by the law itself, independently of every fact, is assigned to a wife not separated, to an insane person, to a minor under twenty-one years: these respectively have the domicile of the husband, of the curator, of the person to whose power they are subject (c. 93).

Voluntary domicile, from present law, is acquired by abiding in some place with the mind (intention) of remaining there perpetually, if nothing calls one away from there, or by abiding prolonged to a completed decade. When abiding is joined with the mind of remaining, domicile is acquired from the first day. In the other case, it is necessary that ten years have elapsed. But the place, by present law, can be a parish or quasi-parish, or a diocese or quasi-diocese (apostolic vicariate, apostolic prefecture). Hence domicile can be parochial or diocesan (c. 92).

But this is to be carefully noted: abiding can be strictly personal, when the person himself, in a morally continuous manner, is present there; and a relatively brief absence does not impede this continuity. And it can be quasi-real, i.e. continuing in a house built, bought, or rented for oneself. Thus one is judged to remain perpetually, and consequently to acquire and have domicile, in the place where he has procured for himself a stable summer house.

Quasi-domicile is a certain imitation or diminished manner of domicile. By present law quasi-domicile is acquired by abiding in a parish (or quasi-parish), or at least in a diocese (or quasi-diocese), either joined with the mind of remaining there at least for the greater part of the year, if nothing calls one away from there, or in fact prolonged for the greater part of the year (c. 92 § 2).

A minor, after he has gone out from infancy, and a wife can obtain quasi-domicile; a legitimately separated wife can obtain even domicile (c. 93 § 2).

Domicile and quasi-domicile are lost by departure from the place with the mind of not returning. Yet a wife, an insane person, and a minor cannot have this efficacious will as regards domicile (95).

The Code does not expressly say how legal domicile is lost. But it seems that this must be said from the nature of the matter. Legal domicile ceases as necessary, when personal independence has been acquired. Yet it will remain as voluntary, as long as the person who is his own master has preserved the mind of dwelling there or of returning.

The same Code assigns legal quasi-domicile to no one. Therefore there is no reason why, with R. P. Maroto, [1] we should think that legal or necessary quasi-domicile is obtained by persons who are not their own masters. Therefore the fact is to be considered. If, however, the husband, the curator, or the person to whom the minor is subject has nowhere domicile, but only quasi-domicile somewhere, the person who is not his own master has acquired his own quasi-domicile or has not. In the former case, he will participate only in that quasi-domicile. In the other case, lest he be called a vagus, the quasi-domicile of the husband, tutor, or curator will enter into the place of legal domicile. We say this, supplying the silence of the law from the norm of c. 20.

Nothing prevents someone from having two or three domiciles. The classic case is that of him who is accustomed to dwell half the year in one place, the other half in another place. Someone can also easily have a domicile distinct from a quasi-domicile. But can the same person have two quasi-domiciles at the same time? Before the Code this was commonly denied; and it still seems to have to be denied, since neither in fact nor in intention can someone dwell in two places at the same time for the greater part of the year. Yet the difficulty can now be raised from c. 95, by which quasi-domicile is

not said to be lost except by departure without the mind of returning. Wherefore R. P. Maroto [1] has gone over into the different opinion.

Moreover, someone can be a vagus in a parish who has domicile in the diocese, but not conversely; and he is not fully a vagus unless he possesses not even domicile or quasi-domicile in the diocese.

But now let us return to our matter, i.e. to subjection to law.

[1] D'Annibale, *Summula*, I, 80, separates travelers from wayfarers. In the Code, however, that distinction seems to be passed over.

[2] On Domicile, cf. Laurin, *Archiv*. XXVI, 165 ff.

[1] *Institutiones iuris canonici*, I, n. 410, note.

[1] Ibid. n. 413.

— Principle concerning personal subjection. 1. The inhabitants and newcomers are subject to particular laws of the territory if at the same time they actually abide there. Yet even when absent, they are held by the laws of their own territory, if the transgression of them harms in their own territory, or if the laws are personal (c. 13, § 2; 14, § 1, 1°).

2. Travelers:

a) are held by general laws even if these do not have force in their own territory, but by no means if the place in which they are staying is exempt;

b) are not held by the laws of their own territory, except for the reason which was just mentioned under n. 1;

c) are not held by the laws of the territory in which they are staying, "except those which provide for public order, or determine the solemnities of acts."

Public order is to be understood as immediately public; it includes those dispositions whose public observance seems to have to be required indiscriminately: v.g. a local interdict, precautions concerning the admission of celebrants in a church, laws which cannot be violated without scandal, and all laws which have been expressly established concerning travelers. For the words "public order" are rather little defined, and they receive interpretation from the will of the legislator and from received usages. Perhaps it can be said that public order is provided for by those laws which have been enacted rather for averting common harm than for promoting the common good. For travelers of themselves ought not to cooperate with the common good of another territory; yet they cannot be harmful. (Ball.-Palm., I, tr. 3, n. 362, use this formula: they are held "by laws ... which have been specially enacted for the good of that place by reason of the necessity of the republic.")

Therefore, of themselves travelers participate in the exemptions and advantages, but not in the burdens, of the places in which they are staying. And this holds even if the particular law has force both in their own territory and in the place where they are staying: for travelers escape each particular law. [1]

Yet the case would be different if the law, v.g. in a provincial or national council, were imposed upon several dioceses at the same time. An inhabitant of that province or a citizen of that nation is bound to that law as long as he is staying in the province or nation (Ball.-Palmieri, I, tr. 3, n. 362).

3. Vagi, contrary to what many thought concerning particular laws, from the clear disposition of c. 14, § 2, "are obligated by both general and particular laws which have force in the place in which they are staying."

[1] Many, however, with St. Alphonsus, l. 1, n. 156, reject this.

— Applications. 1. He who, on a day of fast or feast, is staying in a place where then there is no fast or feast, need neither fast nor abstain from servile works.

2. A traveler who is staying in a place where on that day a fast or feast is to be observed must further inquire this: whether the precept to be observed is of common law or of particular law. In the former case, but not in the latter, he will have to observe the fast or feast. He must moreover guard against scandal, from the general law.

3. One departing from a town where there is no fast or abstinence will be able there to eat meats and to take a full meal twice, although on the same day he has returned home where he would have had to fast. But having returned home, he will have to abstain from meats; yet he will no longer have the possibility of fasting, since by two full meals the fast has already been substantially injured.

4. One about to depart from a place where fasting has force from the general law, but on the same day about to arrive at an exempt place, will have to observe the law of abstinence having force there, but not the law of fasting, because the observance of fasting is indivisible, and for part of the day he will be exempt. Cf. Baller.-Palm., I, tr. 3, n. 351.

5. Travelers, before they leave their own territory, probably are not bound to observe precepts there, when, within the useful time for fulfilling those precepts, they will arrive at a place immune from those precepts. Thus, he who before dinner is about to arrive at a place where there is no feast, is not bound to hear Mass in his own territory.

6. A Belgian or German cannot at Rome, on days of fasting, eat cheese in the evening collation. For although, while the Code has force (c. 1250), abstinence from milk foods now no longer pertains to common law, nevertheless common law, or c. 1251, commands that on days of fasting, morning and evening, the approved custom of places be observed concerning the quantity and quality of foods.

7. It is sometimes conceded that the twofold weekly abstinence which, from c. 1252 § 2, must be observed during Lent on Friday and Saturday, be observed on Wednesday and Friday. What then is it permitted for travelers to do?

a) In a place where the days indicated by the Code are observed, they will have to observe abstinence just as the inhabitants of that place: for the inhabitants observe the common law. Cf. c. 14, 3;

b) In a place where abstinence is kept on Wednesday, if they spend the whole week there, they will have the option of observing Wednesday or Saturday. For in the case, the local privilege is not one of dispensation, but of a changed day. Therefore travelers can use the local privilege so that they transfer their obligation to Wednesday; and they can also observe the common law on Saturday;

c) If on Wednesday they have used the local privilege and therefore have observed abstinence, they will not be bound to abstain from meats a third time because on Saturday they have fallen upon a place where the common law is observed;

d) But what if they so travel that on Wednesday they are in a place where abstinence is kept on Saturday, but on Saturday in a place where abstinence is to be kept on Wednesday? You might say at first sight that they are held by the Saturday abstinence. Yet, the Church so permits travelers to accommodate themselves to the usages of places, that it can probably be said that they are not held by the Saturday abstinence: the Church is not judged to wish to bind one to a singularity. In a similar cause concerning fast, after Sanchez, [1] Laymann, [1] and Lacroix, [2] Lehmkuhl [3] admits this, calling it a benign interpretation of the mind of the Church. Yet he himself forbids that one deliberately pass from one place to another to avoid the obligation. However, the mind of present law permits us to disregard that exception. For concerning the very reservation of cases, c. 900, 3° declares that it lacks force outside the territory of the one reserving, even if the penitent has departed from it to seek absolution. Cf. also Noldin, *Princ.* 149.

[1] *In Decal.* l. 1, c. 12, n. 30.

[1] *Theol. mor.* l. 1, tr. 4, c. 11, n. 8.

[2] *Theol. mor.* l. 3, p. 2, n. 1271.

[3] *Theol. mor.* I, 236.

— Local subjection or exemption. Nor do particular laws oblige in a fully exempt place. [4] Such indeed is a place which is judged to be outside the territory, because another exercises similar power there. Cf. Schmalzgrueber, in l. 5, t. 39, n. 49.

But today are the houses of exempt religious sufficiently exempt, so that lay guests ought to observe no other laws except personal laws or those by which the regulars themselves are held, and so that they are not there liable to episcopal censures? With Suarez, [5] we think this should rather be denied.

For those places are not exempt according to themselves, but only by reason of the religious. Wherefore the Code nowhere directly says: houses of regulars are exempt places; but it has elegantly expressed in c. 615 the exemption subordinated to persons in this way: "Regulars ... with their houses and churches ... are exempt from the jurisdiction of the local Ordinary." Moreover, contrary to what happens in another territory, where, as much as the common good demands, they are bound by local laws, in that house lay persons would have no superior who could command them. Finally, the regulars themselves do not avoid in their exempt houses the diocesan laws to which they are subject; why would a layman there avoid the laws to which he himself is subject? And those houses are so much in the territory that the parish priest of the place can validly assist at marriages there.

Yet St. Alphonsus, I, 157, judged the opposite opinion very probable; Ballerini-Palmieri, *De legibus*, I, 347, do not wish to decide the matter; and even while the Code has force, approved authors, such as Noldin, I, 151; Genicot-Salsmans, I, 97; Cappello, *De censuris*, n. 9, adhere to the same. Wherefore we do not deny probability to the opinion which thinks that guests, in houses of regulars, are of themselves immune from episcopal laws and censures. For the rest, today rare cases will occur.

[4] Cf. Suarez, *De censuris*, l. 5, c. I, n. 5; D'Annibale, I, 205 (12); 306 (28).

[5] Ibid. n. 6.

§ 4. On the Interpretation of Ecclesiastical Law

— I. General norms. Concerning the interpretation of ecclesiastical law in general, these proper points come to be observed.

Besides authentic interpretation, which the legislator himself gives by way of law, and any competent tribunal gives by way of sentence in the causes which it decides, interpretation also takes place by way of rescript in a particular matter.

While the first has the same force as the law itself, both of the latter exercise a force circumscribed to the persons for whom they were given, and that for the affairs alone with which the sentence or rescript dealt (c. 17).

What, then, shall we say about interpretations which appear under this title in the *Acta Apostolicae Sedis*: *Romana*. - *Romana et aliarum*. - *Dubia*.

The very insertion in the official commentary brings it about that concerning those responses there is authentic certainty also in the external forum.

And it is not doubted that by those responses a secure rule of acting is furnished to all the faithful whom it concerns. Yet the authenticity of the response does not suffice of itself to convert a rescript into a general law. Therefore it remains to be asked whether or not all the faithful are held to follow this interpretation. We think that this question must be answered by this distinction.

When, from the inscription itself, as in the first example, there are named, or at least in a less definite way there are indicated, the dioceses for which they have been given, those responses of themselves oblige those dioceses alone.

But when no person or region is indicated for whom the rescript has been given, the authentic solution of the doubt seems to be proposed to the whole Church, and consequently to oblige all in that matter.

Not rarely it happens that an interpretation, even given to a particular diocese, is so received by authors that it becomes usual, and soon obliges as a custom through connivance.

But if a response circulates outside the *Acta Apostolicae Sedis*, it is unknown in the external forum, so that, from the very mind of the one responding, the solution has been given as less definitive, and, excepting those to whom the rescript has been sent, others preserve the liberty of thinking differently.

— II. A particular rule concerning the Code of Canon Law. Authentic interpretation of universal laws was accustomed to be made by rescripts, in each one's own province, by the Sacred Congregations. Yet, when a doubt formally affects a canon of the Code, from the Motu Proprio *Cum iuris*, 15 Sept. 1917, authentic interpretation has been reserved to the proper Commission instituted by that diploma for authentically interpreting the canons of the Code. In matters, however, of greater moment, the Sacred Congregation whose proper matter it is, is heard.

— III. Necessity of promulgation. From c. 17 § 2, authentic interpretation by way of law, not only when it is extensive or restrictive, but also when it is comprehensive but explains a law truly doubtful, is not drawn back retroactively and must be promulgated.

— IV. Computation of time. The special question concerning the computation of time, of which frequent mention is made in laws, is now solved by a proper title of the new Code (l. I, t. 3), yet in such a way that liturgical laws remain untouched. Thus, in a liturgical matter, the day has a beginning other than midnight; and the Sunday which is assigned to a month as the first sometimes precedes the month itself. Furthermore, unless something else is expressly provided, the rules of computation seem able to be proposed and explained summarily in this way.

1. An hour, concerning whose quantity nothing is said, but which we know consists of 60 moments, according to the various constitution of a clock, begins or ends at the first or last stroke of the clock. And most clocks are judged to have been made so that the hour has elapsed when they give the first stroke of the hour.

But since there are various estimations of hours, of itself the common usage of the place is to be observed; yet for many private acts an option is given, whose force we shall weigh in the treatise on conscience.

2. A day, even in ecclesiastical matter, has its beginning from midnight, and consists of 24 hours to be computed continuously (c. 32). Hence, when from law computation is made by days, as v.g. concerning the time for which a novice can be absent, parts of days are to be disregarded which do not pertain to the continuous space of 24 hours which are to be computed from midnight to midnight. Wherefore a novice who has been absent twenty times for five or ten separate hours will not be judged to have been absent even for a day; nor is the day on which he sets out or on which he returns to be computed in the time of absence which is estimated by days. [1] Yet continuity is to be understood morally: he has been absent for a day who has been absent morally for 24 hours, computed from midnight.
3. A week (c. 32) is said to consist of 7 days, that is, therefore, of 7 spaces of 24 hours to be computed continuously. But it is not required that the days themselves be continuous among themselves, or that a certain day, say Sunday, be considered as the first. Hence, unless the law establishes that the week is to be taken as in the calendar, any seven full days - i.e. seven intervals of 24 continuous hours from midnight to midnight - even not continuous, will make a week.
4. Month and year either are taken as in the calendar or not. In the latter case, a month designates a space of 30 days; but a year, a space of 365 days.

Furthermore, they are taken as in the calendar:

a) When they are designated by their proper name, v.g. in the month of March, or when an equivalent designation is used. Thus, by saying "in the next coming year," you equivalently designate the year 1923;

b) When continuous time is assigned, as v.g. in suspension for three months.

Thirty or 365 days are taken when the time is designated as interrupted, as when an absence of three months is permitted to a canonical beneficiary.

5. As to the beginning and end of time: either the term *a quo* is assigned neither explicitly nor implicitly (suspension from divine things for a month; three months of vacations in a year), and then it is computed from moment to moment. Or the term *a quo* of time is assigned; then (excluding the special case of acts which are renewed at fixed times, as vows, election): if the term *a quo* coincides with the beginning of the day, the first day is computed, and the time is ended when the last day of the same number begins: v.g. two months from 15 January are judged to have elapsed when the 15th day of March begins (at midnight). If it does not coincide with the beginning of the day: the fourteenth year of age, the ten-day period for appealing (the beginning of these is birth, the sentence of first instance), the first day is not computed, and the time is ended when the last day of the same number has been completed. Therefore one born 15 March 1900 will have fourteen years, when the day 15 March 1914 has been completed (at midnight).

The day of the same number is taken differently when there is question of several months or years, and when there is speech of several days. In the former case, it is the day which in another month has the same number, v.g. the 20th, the 25th. Yet because some months number 30 days, others 31 days, and February alone has 28 or 29, the day of the same number can fail at the end of the month. But then the last day, v.g. 28 February, is had for the day of the same number as the final days (v.g. 28, 29, 30, 31 Jan.) of the month which has more. But when the time is shorter than a month, the day of the same number is that on which the number indicated by the very space is repeated: v.g. the eighth day, the tenth, if there is question of an eight-day period, of a ten-day period.

Finally, if there is question of acts which recur after fixed intervals, v.g. of vows which after one or two years must be renewed or are converted into perpetual vows, of an election which returns to be made every sixth year, the time is ended on the same recurring day on which it began, but, the consideration of the hour of the act having been neglected, it can be done through that whole same day. Hence, although first vows are not made on the same recurring day on which someone entered the novitiate, but on the next day, nevertheless the vows emitted, [1] an election made on 15 August, will be renewed on the recurring day 15 August.

6. As to the obligations of contracts, for example money borrowed to be repaid, unless those making the agreement have defined something else, canon law accommodates itself to the civil law having force in the territory (c. 33 § 2).

7. Canon 35 distinguishes continuous time from useful time. Continuous time admits no interruption; useful time does not run for one who is ignorant or impeded. V.g. if ten useful days are granted for appealing, the days on which someone has been impeded are not computed in them. Time of itself is judged continuous; the express or tacit concession of useful time is to be demonstrated.

[1] But for those who must reside insofar as they have certain offices to be performed in a definite place, that rule is to be applied prudently and cautiously. Let us suppose a canon who has been present at Matins but not at the other hours in choir. On that day, on which he has fulfilled his office only in part, he is not judged to have resided. Wherefore, if he has already fully consumed his lawful vacations, on that day he loses, for the proportional part, not only the daily distributions, but also, for the proportional part, the fruits of his prebend or benefice, and can be punished as a violator of the law of residence.

[1] And even if one who was professed at the sixth hour repeats the vows only at the eleventh hour, nevertheless, on 15 Aug. from the sixth hour to the eleventh he will not be released from vows.

§ 5. On Privileges and Dispensations in Ecclesiastical Law

I. - On Privileges

— Various rules. These few things are to be added to the notions given above, n. 209 ss. In present ecclesiastical law:

1. Privileges are perpetual, unless something else is established (c. 70). Those given with the clause "at our good pleasure," or with another equivalent clause, are extinguished when the right of the one granting is resolved (c. 73).
2. Privileges granted orally by the Holy See have force in the forum of conscience; but in the external forum they will have to be duly proved (c. 79).
3. Habitual faculties which are granted either in perpetuity, or for a prefixed time, or for a certain number of cases, are reckoned among privileges beyond the law; and faculties of this kind, unless in the concession the industry of the person was chosen, or something else was expressly provided, if they have been granted to a bishop, also belong to the vicar general, and pass to the Ordinaries who succeed the bishop in governance (c. 66).
4. Personal privileges are extinguished with the person; real or local privileges cease by the absolute destruction of the thing or place; yet if the place is restored within fifty years, local privileges revive (cc. 74, 75).

II. - On Dispensations

— I. What the Supreme Pontiff can do. 1. The Supreme Pontiff in every ecclesiastical law, both particular and universal, always grants a valid dispensation to the faithful. This follows clearly from what was said above, n. 223. He can loose himself in the way which was explained there.

In divine law he does not properly dispense; yet he can use the power of binding and loosing to relax, for a just cause, the bond of a vow, an oath, a ratified marriage, indeed of a marriage which after baptism was not consummated. For a just cause, I say. For without such a cause he cannot withdraw this matter from divine law.

— II. What Ordinaries can do. 1. In canons 81 and 82 this principle is set forth: From a general law of the Church, or from a law which the Pontiff has made for a special territory, Ordinaries below the Supreme Pontiff cannot validly dispense, not even in a particular case, unless power has been granted to them explicitly or implicitly; "or unless recourse to the Holy See is difficult and at the same time there is danger of grave harm in delay, and the dispensation is one which the Apostolic See has been accustomed to grant."

Therefore, in order that they may validly dispense without a positive concession of the Holy See, three things must concur: a matter in which the Holy See is accustomed to dispense (v.g. the impediment of consanguinity in the 2nd or 3rd degree of the collateral line); danger of grave harm from delay; difficult recourse to the Holy See.

The cause which before the Code writers commonly added, i.e. frequently occurring cases, is passed over in silence, and now does not seem to have force.

2. But an express faculty of dispensing is granted to Ordinaries of places in the following cases:

a) In doubt of fact, they can dispense, even in invalidating and incapacitating laws, provided there is question of laws in which the Roman Pontiff is accustomed to dispense (c. 16);

b) They can dispense from the observance of sacred times (days of fast, abstinence, or feast), in singular cases, subjects who are faithful one by one, or individual families, even outside the territory; and, in their own territory, even travelers (c. 1245).

Indeed, from a particular cause of a great concourse of people or of public health, the same Ordinaries can dispense the whole diocese or place from fast and abstinence. Thus, in the year 1919, to provide for public health, the bishops of Ireland relaxed the fast through the whole of Lent;

c) They can relax non-reserved vows for a just cause for all subjects and also travelers. Yet they cannot injure a right acquired by others (c. 1313);

d) The same faculty is granted to them in regard to oaths (c. 1320);

e) They can dispense in the interstices which are to be observed between the various ordinations, yet not in such a way that two sacred orders, or minor orders with the subdiaconate, be conferred on the same day, or four minor orders at once, or first tonsure with a minor order. Cf. c. 978;

f) They can dispense in banns, even those to be made or repeated in another diocese (cc. 1028, 1030);

g) They can dispense in matrimonial impediments when the cases concur which are set forth in the treatise on marriage;

h) They can dispense their subjects by themselves or through another from all irregularities arising from an occult delict, except that which arises from voluntary homicide or abortion, or another brought to the judicial forum (c. 990);

i) In occult cases, they can by themselves or through another remit penalties *latae sententiae* established by common law, excepting censures reserved to the Holy See in a most special or special manner.

Indeed, in public cases, they can remit penalties *latae sententiae* established by common law, excepting cases brought to the contentious forum, censures reserved to the Holy See, and certain others enumerated in canon 2237;

j) In urgent cases, for individual books they can grant permission to read, etc., prohibited books. And they can obtain a general faculty from the Holy See (c. 1402). But this is rather a license than a dispensation;

k) With the consent of the synodal examiners, they can dispense a candidate for a parish, commended by praise of doctrine, from the examination on doctrine (c. 459, 3°).

N.B. Therefore no power of dispensing in the canonical hours is granted to them. Yet they can have this from centenary custom.

They can also obtain habitual faculties from the Sacred Penitentiary for the internal forum. Moreover, not a few bishops were accustomed to obtain for the external forum various quinquennial and decennial faculties, v.g. in impediments. But faculties of this kind, saving certain temporary exceptions, have been revoked by the decree *Proxima*, of the S. C. Consistorialis, 25 April 1918. Yet there remain the faculties which in mission places the S. C. of Propaganda Fide has been accustomed to communicate. And new ones have begun to be granted. Thus, outside the missions, by the S. C. of the Sacraments habitual faculties are granted for dispensing, v.g. in lesser impediments of marriage.

Tacitly (of itself, or unless another intention appears from the text or custom) there is granted to Ordinaries of places the faculty of dispensing in pontifical laws to which the clause is added: "unless dispensed."

3. In particular cases and for a just cause, Ordinaries of places can dispense from the decrees of a plenary and provincial council (c. 291).

The powers granted by common law pertain to the ordinary and consequently delegable power of Ordinaries of places.

4. Finally, in diocesan laws they dispense by their own authority. And the same must be said of particular customs, since they can abrogate them.

But by the name Ordinary of the place or of places there come (besides the Roman Pontiff), each for his own territory, the residential bishop, abbot or prelate *nullius* and their vicar general, administrator, apostolic vicar and prefect, and likewise those who, when the aforesaid are lacking, in the interim succeed in governance by prescription of law or by approved customs (c. 198).

— III. What major Superiors of religions can do. Major Superiors in exempt clerical religions, i.e. the General, the Provincial, and in monasteries *sui iuris* the Abbot or Prelate, even local, come under the name Ordinary with respect to their subjects (c. 198).

As such, they can dispense their subjects:

From pontifical laws in which the Holy See is accustomed to grant dispensation, if recourse to the Holy See is difficult and at the same time there is danger of grave harm in delay (cc. 81, 82).

In doubt of fact, provided there is question of laws in which the Roman Pontiff is accustomed to dispense (c. 15).

From sacred times, in singular cases and for a just cause (c. 1245).

From non-reserved vows (c. 1313), with the right acquired by a third party remaining uninjured.

From oaths (c. 1320).

From irregularities arising from an occult delict, except voluntary homicide and the abortion of a human fetus, or another brought to the judicial forum (c. 990).

From penalties *latae sententiae*, as was said concerning Ordinaries of places (c. 2237).

For individual books, in more urgent cases, they can give license as regards books proscribed by the Holy See (c. 1402).

Moreover, they can exercise faculties of dispensing which, from the non-revoked privileges of their religion, are within their power.

When there is question of dispensation from sacred times, from vows and oaths, not only religious, professed or novices, are understood to be subjects, but also persons who "dwell in a religious house day and night" by reason of service, education, hospitality, or infirm health (c. 514).

— IV. What parish priests can do. Parish priests cannot dispense from any law unless power has been expressly granted to them (canon 83).

It is expressly granted to them by c. 1245, § 1, that in singular cases and for just causes they can dispense subjects, individual faithful or individual families, even outside the territory; and in their own territory even travelers, from the common law of the observance of sacred time.

In urgent cases they have the faculty of dispensing in impediments of marriage, which is set forth in its proper place (c. 1044-1046).

— V. What religious Superiors can do. Superiors of an exempt clerical religion - even those who are not major Superiors - can, like Ordinaries, dispense from sacred times to be observed, from vows, and from oaths, subjects understood as was said at the end of n. 296 (cc. 1245, 1313, 1320).

— VI. What confessors can do. Confessors duly approved can do certain things concerning indulgences, irregularities, penalties, and matrimonial impediments.

a) For those detained by a legitimate impediment they can commute the pious works enjoined for gaining indulgences (c. 935). As is clear, the substance of the principal work will have to be preserved in some way: thus they cannot join to another work an indulgence annexed to communion. It is another thing if communion is required as a condition of an indulgence granted to a different work. Thus also, without the use of a blessed crucifix, those impeded will not be able to gain the indulgences of the way of the cross. Cf. resp. S. Paenit. 14 Dec. 1917, ad V;

b) In more urgent occult cases in which the Ordinary cannot be approached, and danger of grave harm or infamy is imminent, they can dispense from all irregularities arising from an occult delict, except voluntary homicide and abortion of a human fetus, but only for this, that the penitent may be able licitly to exercise orders already received (c. 990, § 2);

c) 1. "In more urgent occult cases, if from the observance of a vindictive penalty *l. s.* the guilty person would betray himself with infamy and scandal, any confessor can in the sacramental forum suspend the obligation of observing the penalty, with the burden enjoined of recurring at least within a month by letter and through the confessor, if this can be done without grave inconvenience, the name being withheld, to the Sacred Penitentiary or to a bishop furnished with the faculty, and of standing by his mandates. 2. And if in some extraordinary case this recourse is impossible, then the confessor himself can grant the dispensation according to the norm of c. 2254, § 3": i.e. with those things enjoined which by law must be enjoined, and with a congruous penance and satisfaction imposed for the penalty, under the burden of falling back into it. (Cf. c. 2290.)

N.B. The confessor has the same faculty as regards censures, yet in such a way that he can never absolve without the burden of recurring a priest who has absolved an accomplice in a shameful matter or has feigned to absolve him. But censures are absolved, and here there is question of dispensations;

d) In more urgent cases they have in impediments of marriage the faculty which is explained in its proper place.

Regular confessors moreover have faculties from the privileges of the Order, v.g. of dispensing non-reserved vows; and, in certain religions, certain vows even reserved.

N.B. When the condition of intrasacramental use is not added, the confessor can exercise these faculties even outside confession toward penitents. But penitents are as many as he can here and now hear in confession.

— VII. What priests can do. A simple priest who assists at marriage has, in more urgent cases, from cc. 1044 and 1045, the faculty of dispensing in impediments of which there will be treatment in its own place.

— You will ask how a faculty restricted to individual cases is to be understood; or, what it is to dispense in individual cases?

This is the reasonable interpretation of the matter, that the one dispensing cannot prolong the dispensation beyond what the present cause requires: v.g. not beyond the time of the illness or journey for which the dispensation is sought. But, as it seems to us, no other limitation of time is of itself to be added. Yet it happens that an interval of time is expressly defined.

Thus, in Belgium, the Most Eminent Archbishop is accustomed to communicate to confessors the faculty of dispensing in fast in such a way that they cannot grant a dispensation for a time beyond a year. The formula which R. P. Maroto uses (*Institutiones*, n. 304), "for each one and as often as," seems to sound greater severity. St. Alphonsus, III, 288, says: "For a time and for individual cases."

— The subject of dispensation. 1. Of itself, each one dispenses his own subjects. And since dispensation means the use of gracious jurisdiction, it can be exercised everywhere toward subjects.

2. Vagi also, just as now they must obey the laws of the territory in which they are staying, so can they be dispensed by all who in that territory possess the faculty of dispensing.
3. Travelers can be dispensed, both by the Ordinary of the place and by the parish priest, when the latter is competent in the matter, in the territory of either: from sacred times (c. 1245); from vows and oaths (cc. 1313, 1320); in more urgent cases, from impediments of marriage (cc. 1043-45); from censures reserved by law (c. 2253).

Dispensation from interstices can be given by the bishop to those whom he ordains. Thus, from higher law. [1]

Dispensation from irregularities arising from delict must be given by the proper Ordinary (c. 990); just as the faculty of reading, keeping, etc., prohibited books (c. 1402 § 1).

Dispensation from penalties, since the Code in canon 2237 does not determine the subject, seems able to be given, in his own territory, by the Ordinary of the place to all.

The faculty granted for dispensing in public impediments of marriage is exercised by the Ordinary who gave the testimonial letters or transmitted the petitions to the Holy See, even if the spouses have definitively migrated elsewhere (c. 1055).

Concerning general faculties granted by indult, cf. Treatise on marriage.

Faculties to be exercised toward penitents profit all in whom that quality exists, i.e. all whom, in the place where they are, the one dispensing can absolve sacramentally.

4. From the received interpretation, he who possesses by general communication the faculty of dispensing can dispense himself. Yet a confessor will not be able to use toward himself a faculty circumscribed to penitents, since no one is the penitent of himself, nor are other confessors lacking. A Superior, on the contrary, is of himself alone, so that he would seem to be in a worse condition unless he could apply to himself the faculty conceded for subjects.

Yet some, v.g. Suarez, [2] thought that the faculty of dispensing in one's own vows had not been granted; but others, v.g. Sanchez, [1] denied that exception.

Concerning the legislator himself dispensing with himself, we spoke above, n. 223.

5. Regulars, when they can be dispensed by their proper Ordinary, cannot have recourse to the Ordinary of the place. Yet if the possibility of approaching their proper Ordinary is lacking, they seem, from the presumed faculty of the Superior, to be able to be dispensed by the Ordinary of the place.

With the Superior consenting, they can approach the same Ordinary so that he may use his voluntary jurisdiction in cases in which the proper Prelate lacks power: because, from r. 61 of Law in 6°, "That which is granted for someone's favor is not to be turned back to his disadvantage."

But this express concession is read in c. 620: "By an indult legitimately granted by the Ordinary of the place, the obligation of common law ceases also for all religious staying in the diocese, saving the vows and proper constitutions of each religion."

6. A dispensation can validly be obtained for another, and has force before his acceptance, unless something else appears from the clauses. We derive this from c. 37.

[1] Cf. resp. S. Cong. Conc. 30 July 1597 and 30 Sept. 1609, alleged in *Meldensi, Collect. prop. Fid.* I, 231.

[2] *De Religione*, T. VI, l. 6, c. 11, n. 4.

[1] *De Matrimonio*, l. 8, d. 3, n. 8-9.

— The use of a personal dispensation is of itself permitted everywhere. Whether it is given in the internal forum or in the external forum, a dispensation of itself permits acts in either forum. Yet, unless it is proved in the external forum, or legitimately presumed, a dispensation of the internal forum will not impede the action of the external forum (Cf. c. 2251). Wherefore c. 1047 provides that a matrimonial dispensation, given in the internal forum over an occult impediment, be noted in the secret archive; but if given in the sacramental forum, it be confirmed by a new dispensation in the external forum, if the impediment has become public.

— In canon 84 § 2 it is expressly established: "A dispensation in doubt concerning the sufficiency of the cause is licitly sought and can licitly and validly be granted."

— What we said above concerning the strict interpretation of a faculty granted for a certain case, and concerning the cessation of a dispensation when the motivating cause has certainly and totally

ceased, is expressly confirmed by cc. 85 and 86. Yet from the latter canon it can be gathered that the dispensation does not cease, if the motivating cause subsists in part, or if the removal of the cause has been only doubtful.

Appendix I: On Rescripts

— I. Notion. Division. A rescript is a response of the Holy See or of an Ordinary, given in writing at the instance of one petitioning.

Rescripts are either of justice, or for lawsuits, or of grace; and the latter not rarely contain a dispensation or privilege. Then attention must also be given to the rules of dispensations and privileges (c. 62).

— II. Persons capable. With the exception of an excommunicated or suspended person to be avoided, or of him who by sentence has been made or declared excommunicated or suspended, and of one personally interdicted, rescripts can be obtained by all, both for themselves and for others, even apart from the consent of these; and, unless the clauses convey something else, they have force before their acceptance (cc. 36, 37, 2265 § 2; 2275, 3°; 2283).

— III. Conditions of validity. Conditions added are only then for validity, when they are expressed by the particles *if*, *provided that*, or another of the same signification (c. 39). But in all rescripts the condition is to be understood: *If the petitions rest upon truth.* Yet they rest sufficiently upon truth so that they are valid, if those things have been expressed which, from the style of the curia, must be expressed for validity, and at least one motivating cause is true. And the truth of at least one motivating cause is required even when the clause *Motu proprio* has been added, unless a dispensation is sought from a lesser impediment of marriage (cc. 39, 40, 42, 45, 1054).

If a rescript grants several favors, a defect in one part does not invalidate the other (c. 42 § 3).

— IV. From what moment they operate. Rescripts of which there is no executor have effect from the moment at which the letters have been given; and it is necessary that at that same moment the petitions rest upon truth. The others have effect from the time of execution: at which time alone, then, the petitions must rest upon truth (cc. 38, 40, 41).

Wherefore jurisdiction to hear confessions, sought by letters, is possessed from the moment at which it has been granted. Therefore, in a case of necessity, where there is certain conjecture, it will be permitted to use such jurisdiction even before notice has been received. Outside a case of necessity, the use would be rather rash, and consequently illicit. Cf. Laymann, l. 1, tr. 4, c. 23, n. 10.

— V. Errors. An error in the name of the person to whom or by whom they are granted, or of the place in which the person is staying, or of the matter about which there is question, does not stand in the way of validity, provided that, in the judgment of the Ordinary, there is no doubt concerning the person himself or the matter (c. 47).

— VI. Execution of a rescript. The executor of a rescript:

1. Enters upon his function before he has either received and recognized the authentic letters, or previous notice of those letters has been transmitted to him by the authority of the one granting the rescript (c. 53).

Wherefore, before letters of this kind, or notice, have been received, we cannot use, even validly, a faculty of dispensing in some marriage, or of absolving someone from some reserved case. Cf. resp. S. Offic. 14 Nov. 1892.

2. From can. 54, he cannot of himself deny execution, when the mere ministry of execution is committed to him, v.g. "We command that, if the things set forth are true, you dispense"; otherwise, if in the rescript the concession of the favor is committed to the executor, "We commit it to your judgment that you grant the favor."
3. He must execute in writing rescripts which regard the external forum (c. 56).
4. If he has erred, he can again commit the rescript to execution (c. 59).
5. Unless the person has been chosen rather by reason of a special quality (science, skill) than of office or function, or the tenor of the rescript conveys something else, the executor can substitute another for himself; and a successor in dignity or office is permitted to commit any rescript to execution (cc. 57, 58).

— What happens when the see is vacant. Through the vacancy of the see of the one granting, a rescript is not extinguished, unless something else appears from the clauses added, or unless the rescript contains a power given to someone of granting a particular favor to persons expressed in the same rescript, and the matter is still entire (c. 61).

— VII. Presentation to the Ordinary. A rescript of the Holy See in which no executor is given need not be presented to the Ordinary of the one obtaining it, unless this is prescribed in the letters, or there is question of public matters (c. 51).

— VIII. Recourse to various Superiors. A favor denied by one Sacred Congregation or Office of the Roman Curia is invalidly granted by another Sacred Congregation or Office, or by the Ordinary of the place, even if he has the power, without the consent of the Sacred Congregation or Office with which, or with whom, business had begun, saving the right of the Sacred Penitentiary for the internal forum (c. 43).

We are also prohibited from asking a favor from another Ordinary, when it has been denied by our own, with no mention made of the denial. Indeed, mention of a favor denied by the vicar general is required for validity, so that it can be obtained from the bishop. But what the bishop has denied, the vicar general cannot now grant unless the bishop consents (c. 44).

Appendix II: On the Roman Curia

I. - General Notions

— Notion. The Roman Curia designates the complex of institutions which are present to the Roman Pontiff in the exercise of his jurisdiction and universal power. Insofar as they make one with the Supreme Pastor, they are called by the common name of the Holy See. But the Pontifical Court comprises those administrations which belong to the Supreme Pontiff insofar as he is temporal Prince; and the Vicariate of the City signifies both the Cardinal who, as Vicar of the Roman Bishop, administers the Roman diocese, and the various persons and offices which compose the diocesan curia of the City.

"The Roman Curia consists of the Sacred Congregations, Tribunals, and Offices" (c. 242).

— Common rules. 1. Common points to be noted. (Cf. cc. 242-244).

1. Norms of acting are prescribed by the Supreme Pontiff.
2. All who belong to the Roman Curia are bound by the law of secrecy, which is of varied strictness, and is most severe in the Holy Office, in the Sacred Consistorial Congregation (as regards information concerning new bishops), and in the Secretariat of State.
3. Whatever grave and extraordinary matter is being transacted must first be made known to the Supreme Pontiff.
4. With the exception of the sentences of the Tribunal of the Rota and of the Apostolic Signatura, and of special faculties granted, any graces and resolutions need pontifical approval.
5. Controversies concerning competence are settled by a special assembly of Cardinals whom the Supreme Pontiff shall designate in each single case.

II. - On the Sacred Congregations — A. - On the Sacred Congregations in Common

— 1. Constitution. The Sacred Congregations are constituted essentially of Eminent Cardinals, one of whom presides as Prefect. Nevertheless the Supreme Pontiff presides over a few; in which case there is a Cardinal Secretary to direct the Congregation. To a Sacred Congregation there belong, next, the Secretary and the Under-Secretaries (one or more) as major Officials; Consultors; and minor Officials.

Most Congregations have a province defined by matter; yet a territorial, but more general, province is assigned to the Sacred Congregations of Propaganda Fide and for the Eastern Church.

2. Competence:

a) In the province entrusted to them, the Congregations make general decrees and instructions which, although they do not contain the supreme exercise of legislative power, nevertheless oblige by way of law those to whom they are directed [1]. These, as being more grave, must be approved by the Supreme Pontiff;

b) They give authentic interpretations in the matter subject to them, whether through general decrees, or through rescripts, or through sentences in causes solved by the administrative way.

These, in matters defined, oblige the persons for whom they have been given (c. 17, § 3); prudently applied, they furnish for all a secure norm of acting; yet of themselves they do not have the force of law (c. 17, § 3), unless they are promulgated as general. Cf. the things said n. 286.

Wherefore of themselves they do not affect other persons or other cases, nor do they remove the probability of a different opinion. And it must carefully be observed whether or not they have been given dependently upon certain circumstances. Yet easily, whether from repeated declaration, or from the consent of experts who, weighing the matter anew, have added their vote to the interpretation given, declarations independent of circumstances induce a custom by connivance which obliges. Cf. the things said n. 289.

As we said there, insertion in the official Commentary *A. A. S.* effects: a) that these things be authentically established; b) that they be juridically promulgated when formally or virtually they are general. Therefore of itself it does not convert rescripts into laws. But when every mention of those to whom the rescript has been given is omitted, the authentic interpretation seems to be proposed to all, and consequently imposed upon all. Those things which are not inserted seem less definitive.

But doctrinal decrees in a matter of faith or morals, although according to themselves they are not infallible, nevertheless are of such great authority that - with the distinction of a particular and a general response always preserved - by the very virtue of faith, or by the moral virtue to which the matter pertains, we are obliged not only not to contradict externally, but also to furnish internal assent, which cannot be denied without temerity. Cf. Wernz, I, n. 143 note 47; Lehmkuhl, I, n. 300 and 429.

c) They bestow dispensations and graces in the matter subject to them, whether from the positive approval, or even mandate, of the Pontiff (*ex audientia SS.*), or from special faculties committed to them;

d) They settle causes by the disciplinary and administrative way. In this way, the forms of trials are not to be observed, and positive precepts are not rarely mixed with a juridical solution. If you except the Holy Office, which continues to judge heresy and delicts which induce suspicion of heresy, the Sacred Congregations are no longer tribunals; but only extraordinarily, from a commission of the Supreme Pontiff, do they take cognizance of causes judicially. These decisions are to be transferred to other cases only circumspectly.

Finally it is clear that by the mandate or specific approval of the Supreme Pontiff it can happen that decrees of a Sacred Congregation become true and properly so called universal laws.

[1] This competence is indirectly affirmed by Benedict XV in the Motu Proprio of 15 Sept. 1917, n. II, where he exhorts the Sacred Congregations to issue Instructions rather than new General Decrees (*A. A. S.* IX, 183, or *Periodica*, IX, 16).

B. - On the Individual Congregations

— 1. The Congregation of the Holy Office (c. 247), which before the Constitution *Sapienti Consilio*, 29 June 1908, was more fully called that of the Sacred Roman and Universal Inquisition, is supreme; it has the Supreme Pontiff as president; it protects the doctrine of faith and morals.

It judges, whether in first instance, when delicts are directly referred to it, as is permitted, or in grade of appeal from the tribunal of the Ordinary of the place, criminal causes of heresy and of delicts which induce suspicion of heresy; it moderates the use of the Pauline privilege, and the impediments or dispensations of disparity of cult and mixed religion; it decides concerning the censorship and prohibition of books (in place of the suppressed Sacred Congregation of the Index); and it alone is competent concerning the Eucharistic fast for priests celebrating (c. 249). For its competence it has, besides consultors, qualifiers (of propositions), and a section on the censorship of books.

— 2. The Consistorial Congregation (c. 248) has the Supreme Pontiff as president. It prepares the things to be transacted in Consistories, and, outside the places subject to the Sacred Congregation of Propaganda Fide, it rules all things which pertain to the constitution, division, conservation, and state of dioceses, and to the government of bishops or quasi-bishops (c. 248).

— 3. The Congregation concerning the discipline of the Sacraments (c. 249) cares for the laws concerning the discipline of all the sacraments.

Wherefore to it pertain causes concerning the validity of marriage or sacred ordination which are treated without observing the judicial order; matrimonial dispensations, and dispensations in the qualities of those to be ordained or of the one ordaining. Unless it wishes to remit the cognition to the Sacred Rota, it exclusively takes cognizance concerning the non-consummation of marriage and concerning causes for dispensing upon a ratified marriage. It dispenses in the Eucharistic fast for communion. To the Holy Office there remain its rights defined above, v.g. those which regard doctrine and principles concerning the sacraments; religious, if you except only dispensation from the fast for communion [1], must ask all things from the Sacred Congregation concerning Religious; and those things which pertain more closely to rites are reserved to the Congregation of Sacred Rites.

[1] This very cause is still under judgment.

— 4. The Congregation of the Council (c. 250), which, after the Constitution *Sapienti*, lost the more solemn name, Sacred Congregation of Cardinals Interpreters of the Sacred Council of Trent, is placed over the universal discipline of the secular clergy and of the Christian people.

Accordingly it cares for all things, with the exception of the Eucharistic fast, which regard the precepts of the Church, Mass stipends and obligations, pious legacies, occupation of ecclesiastical goods, benefices, offices, and also sodalities, with Third Orders excluded.

Saving the right of the Congregation concerning Religious and of the Ceremonial Congregation, it solves controversies concerning precedence, and questions concerning ecclesiastical immunity. It admits to composition those who have occupied ecclesiastical goods, even goods of religious. Outside places subject to the Sacred Congregation of Propaganda Fide, to it are attributed all things which refer to the celebration and recognition of Councils and to assemblies or conferences of bishops.

— 5. The Congregation set over the affairs of religious sodales (c. 251) is the proper Congregation of religious; by which name there also come here those who, although without vows, nevertheless lead life in common after the manner of religious.

Wherefore to it privatively pertain all questions which touch a religious family or religious sodales, even if they are disputed with non-religious, v.g. bishops. Nevertheless then, especially at the instance of the party, it can remit the question to another Congregation.

To it are reserved dispensations from the common law for religious. This, after the responses of a special assembly of Cardinals, 24 March 1919 [1], is understood very broadly: v.g. concerning dispensations in observing the rites of Mass, in an impediment to receiving Order, which non-religious would have to obtain from the Congregations of Sacred Rites and of the Sacraments.

To the same Congregation exclusively pertain questions which regard secular Third Orders.

The right of the Sacred Congregation of the Council is preserved intact in confraternities or all pious unions [2], in compositions for usurped ecclesiastical goods; and the right of Propaganda Fide of ruling religious insofar as they are missionaries, and of more fully moderating, even in Europe, societies of ecclesiastics and seminaries which have been founded exclusively for instituting missionaries for foreign missions.

Universities of Studies, even if they are administered by religious, pertain to the Sacred Congregation concerning Seminaries and Studies.

To the Sacred Congregation concerning Religious there is joined a special Commission concerning the approval of new Institutes.

[1] *A. A. S.* XI, 251, or *Periodica* X, 98.

[2] Cf. *Periodica*, V, 89.

— 6. The Congregation of Propaganda Fide (can. 252) is placed over the work of spreading the Gospel; and in regions where the sacred hierarchy has not yet been constituted, or is still in an inchoate state, it possesses a sufficiently universal jurisdiction, which extends to religious themselves, both singly and taken together, insofar as they are missionaries [3].

Outside regions of the missions it is not competent, if nevertheless you except its full power over Societies of Missionaries and Seminaries. And concerning faith, concerning matrimonial causes, and concerning rites to be moderated or interpreted, it must refer to the competent Congregations.

[3] Indeed several religious institutes of missionaries, v.g. Cong. Cordis Immaculati B. M. V. (Scheutensis), Missionariae Franciscanae Mariae, have already obtained that even as religious they be subject to the Sacred Congregation of Propaganda Fide.

— 7. The Congregation of Sacred Rites (c. 253) cares for those things which most closely regard the sacred rites of the Latin Church; and it treats all things which in any way refer to the beatification and canonization of Servants of God, or to sacred relics.

It has Prelate Officials and distinct Consultors for causes of Beatification and Canonization and for Sacred Liturgy.

— 8. The Ceremonial Congregation (c. 254) moderates the ceremonies to be observed in the pontifical chapel and court, the sacred functions of the Fathers Cardinals, and questions concerning the precedence of Cardinals and Legates at the Holy See.

— 9. The Congregation for extraordinary ecclesiastical affairs (c. 255) treats concerning the state and government of dioceses, whenever it is necessary to deal with civil governments, and it applies itself to those affairs which are proposed to it by the Supreme Pontiff through the Cardinal Secretary of State, "especially from those which have something connected with civil legates and refer to agreements made with various Nations."

To this Congregation, as also to the Ceremonial Congregation, no Prefect is assigned.

— 10. The Congregation concerning Seminaries and Universities of Studies (c. 256) exercises vigilant jurisdiction over Seminaries, with the right of the Congregation of Propaganda Fide defined above remaining unharmed, and over Universities or Faculties which depend upon the Holy See, even if they are directed by a religious family.

— 11. The Congregation for the Eastern Church (c. 257) has the Supreme Pontiff as president; it cares for the affairs of the Eastern Church, for which it supplies for the other Congregations, with the exception of the Holy Office, and it also settles mixed questions, or those which touch Latins and Orientals at the same time.

— 12. There is, besides, a Congregation not named in the Code, that of the Reverend Fabric of St. Peter, which, besides the care of the Basilica, has in common with the Sacred Congregation of the Council the faculty of reducing burdens of Masses and of pious legacies. With this case excepted, the Sacred Congregations today are not accustomed to have or exercise any cumulative power.

III. - On the Tribunals

— The tribunals of the Roman Curia are numbered as three: the Sacred Penitentiary, the Sacred Roman Rota, and the Supreme Tribunal of the Apostolic Signatura. Nevertheless there remain to the Holy Office and to the Congregation of Sacred Rites their rights in causes proper to them. Therefore:

— 1. The Sacred Penitentiary (c. 258), over which the Cardinal Major Penitentiary is placed, grants graces, dispensations, sanations, condonations for the internal forum alone, though also for the non-sacramental forum, and besides examines and settles questions of conscience.

Wherefore all can write to it and obtain a response concerning their matters of the internal forum or concerning cases of conscience. Letters are inscribed "To the Sacred Penitentiary" or "To the Cardinal Penitentiary," - Palazzo del S. Uffizio. - The person whose interest is involved, since the matters are customarily secret, is designated by the name Titius or Titia. The one signing the letters indicates the domicile to which the response is to be sent and inserts a postage stamp in his letters. Responses are given gratis. Letters can be written in Latin, Italian, or French. (Rescripts of the Sacred Congregations generally are deposited in the office of the Sacred Congregations themselves, and afterward are sought by the Agent or by the one who presented the petitions.)

Besides, it judges concerning the concession of indulgences and solves doubts concerning indulgences. Nevertheless it belongs to the Holy Office to explain dogmatic points concerning indulgences and to pronounce sentence concerning new prayers or devotions. Wherefore, for the section concerning indulgences, consultors of the Sacred Penitentiary are joined.

— 2. The Sacred Roman Rota (c. 259; cf. cc. 1598-1601) is the ordinary tribunal of appeal.

In the external forum it judges in second instance all causes legitimately devolved to the Holy See by appeal; in last instance, causes known by the Sacred Rota or by other tribunals in second or further instance, but which have not yet passed into a res judged, and in first instance causes committed to it by the Roman Pontiff: in which case the Rota itself, by means of turns of three auditors who succeed one another, settles those same causes in second and third instance. Rotal advocates are joined to the Rota.

— 3. The Supreme Tribunal of the Apostolic Signatura (c. 259; cf. cc. 1602-1605) consists of some Cardinals of the Holy Roman Church, of whom one performs the function of Prefect. Besides certain special causes, it judges, as a court of cassation, concerning a complaint of nullity against a rotal sentence.

It has this as proper to itself, that it can indeed add the reasons for its sentences, but is not bound to do so. To this Tribunal, after the chirograph of 28 June 1915, there were added, in place of Consultors, seven Prelate Voters of the Signatura, and Prelate Referendaries. Cf. *A. A. S.* VII, 310-325.

IV. - On the Offices of the Roman Curia

There is:

— 1. The Apostolic Chancery (c. 260), which expedites bulls for the provision of consistorial benefices and offices (i.e. those which are conferred in consistory, such as bishoprics outside places of the missions) and for the greater affairs of the Church. Over it presides the Cardinal Chancellor of the Holy Roman Church.

2. The Apostolic Datary (c. 261) is occupied with the collation of non-consistorial benefices which are reserved to the Supreme Pontiff; it also cares for the annexed burdens. Over it presides the Cardinal Datary of the Holy Roman Church.

3. The Apostolic Camera (c. 262) cares for and administers the temporal goods and rights of the Holy See, especially when the See is vacant. Over it presides the Camerarius of the Holy Roman Church.

4. The Secretariat of State (c. 263) consists of three parts:

a) The first, concerning extraordinary affairs;

b) The second, concerning ordinary affairs;

c) The third, which the Chancellor of Apostolic Briefs directs, concerning the expedition of Briefs.

The Cardinal Secretary of State moderates this Secretariat.

5. The Secretariats of Briefs to Princes and of Latin Letters (c. 264) write in Latin the acts committed to them by the Supreme Pontiff.

Article III: On Civil Law

— I. Author. The author of civil law is now almost everywhere not one person, but the consent of several, which not rarely is composed of the votes of Parliament, i.e., generally, of the more popular assembly (*Camera*), whose authority is accustomed to prevail, and of the more select college, or Senate; and of the sanction of the king or president of the republic.

Besides, under the name of a decree of the king or president (*decret, arrete*) there comes that secondary form of human law of which we spoke above, n. 264.

II. Promulgation. Civil laws have customarily been promulgated by insertion in some official Commentary (*Raccolta ufficiale, Journal officiel, Moniteur*); and they are accustomed to be vacant for a few days, unless immediate force is established.

III. Subject: What concerning clerics. As regards the subject of law, "from the common and certain opinion, clerics and other exempt ecclesiastical persons are altogether obliged to observe those civil laws which have been made for the public utility of the republic in a matter common to clerics and laymen, and which are not opposed to the sacred canons and to the clerical state and its dignity and offices" [1]. The source of the obligation is the civil law itself, from which the Supreme Pontiff alone is exempt by divine right; but the others are exempt by canonical law as regards the coercive part alone. And in itself, since the person is not made wholly sacred, but truly remains a citizen, nothing prevents clerics from being held by civil laws. Moreover the mind of the Church is that clerics obey just civil laws which are not repugnant to their state. (There are some who derive the obligation of clerics from divine-natural law or from canonical law. To the universal canonical legislator there is

indeed not lacking power of obliging clerics for the common good; but such a law is not demonstrated to be present.)

As regards the coercive force itself, the Church indeed assigns to her clerics a privileged forum; and, insofar as circumstances permit this, she prudently protects immunity from the lay forum, in order that she may conciliate and preserve for the ecclesiastical hierarchy the greater authority which is useful to the republic itself. Yet because today privileges are accustomed to be more odious and, in a society where all things are founded on equality, in part appear less necessary, the Church herself, in concordats, sometimes renounces the privileged forum for civil causes, and even for criminal causes of clerics who are not bishops; the Secretariat of State declared in 1911, for Germany, Belgium, and Holland, that by a contrary usage of more than a century derogation could be made from that same forum [1]; the Holy See warns bishops that they never deny permission to cite clerics before the civil forum or to judge them; concerning that often violated immunity of forum it is silent, and it generally endeavors to obtain this, that without the leave of the Holy See a bishop not be dragged before a lay judge. Therefore it is necessary that by excellent honesty and simple care of obeying the laws, clerics avoid civil lawsuits, especially penal ones. When cited, they will ask their Ordinary what they should do; when consulted by magistrates who have to judge a cleric accused of a delict, they will advise that they secure permission for themselves; when not asked, they will generally not disturb good faith.

But clerics themselves will not sue other clerics, especially Superiors, before a lay judge, unless they have obtained the due faculty.

IV. Use in the ecclesiastical forum. The use of civil law in the canonical forum was formerly admitted generally, when a proper canonical disposition was lacking; and the civil law itself was supplied in like manner by canonical law. Civil law of this kind was said to be canonized (Cf. c. 1, *De novi operis nuntiatione*, V, 32). But today no general disposition of law can be alleged which would permit us, when canon law is silent, to apply civil law to canonical matter. Indeed such a disposition can scarcely be hoped for, since the perfection of canonical laws less demands civil supplements, and civil law no longer deigns to imitate canon law. Wherefore, with Wernz, I, n. 195, and R. P. Maroto, op. c. n. 384, we deny that the contrary opinion of D'Annibale, I, n. 201, can be admitted, to which nevertheless the Sacred Rota adhered in its argumentation, in the Bituricensian cause, Location, n. 22 [1]. And rather c. 20 stands in the way, which, when canonical law is lacking, by no means refers to civil law. But in certain matters the Code itself has commanded the application of the civil law in force in the region. Thus, for the time of urging obligations of contracts, c. 33, § 2; for the matrimonial impediment of adoption, cc. 1059, 1080; for prescription, c. 1508 (but with moderation, cf. the following canons); and for contracts in general, c. 1529.

V. Concerning the obligation of civil law we have already treated above, n. 253.

VI. Character and present-day tendency. Concerning the character and present-day tendency of civil laws these things are to be observed. For a long time, especially after the French upheaval, civil laws strove so to take account of the liberty of individuals, both in acting and in contracting, that they neglected and almost ignored social relations below the rule of public power. And because "individual liberty" is diminished through social bonds, they were therefore rather hostile to societies of persons (*associazioni di persone*). That "individualistic" regard was already being objected to Roman law itself. But the excessively absolute manner in which the free use of right was permitted to individuals, even to the stronger and more powerful, generated oppression of the lowly and various excesses which

won favor for the opposite error of Socialism, which immediately tends to this, that common possession and administration of several things be substituted in the place of private possession and individual effort. But the social cares of laws which, before the war, prudently and cautiously were trying to adapt society to new circumstances, after the fortunes of war are now drawn headlong to inducing a new order, where, on account of alleged more general utilities, free use and free disposition of private goods and rights are contained within stricter limits, and at the same time collegial associations begin even imperiously to rule individual citizens of the same class.

How far public power can legitimately limit the rights of private persons is often difficultly and dangerously defined. Yet for that reason it is not lawful for us to ignore the matter and abstain from action. But labor must be applied, so that each best man, according to his strength, may try both to favor common progress and to preserve Society itself from ruinous errors.

[1] Wernz, I, n. 108.

[1] Cf. *Periodica*, VI, 190.

[1] *A. A. S.* IX, 549.

Summary

— Obligation of human law. By authority communicated through Divine Law, human law truly is the principal cause of moral obligation.

II. Because the common good itself requires acts of all virtues, law can make those acts necessary, so that, when the law is violated, one sins against those virtues.

III. The gravity of matter is to be estimated either from relation to the common good which is to be protected, or from relation to the order of natural law which is mediately violated. Therefore the object of the precept and the proportion of the means to that object must be considered.

Matter in itself very light can become grave from the end; wherefore the same thing will be light in civil society, grave in ecclesiastical society. The legislator can by a grave precept or prohibition avert the danger of a plurality of acts which singly would not greatly bear upon the common good. In doubt concerning matter, one must defer to the judgment of the legislator.

For his end, the ecclesiastical legislator is presumed to urge under grave obligation grave matter: which will he manifests both by words and by penalties, and approved authors also hand it down to us. Nevertheless various statutes or constitutions of associations and religious institutes are only penal laws.

The civil legislator does not lack the power of directly binding conscience. Yet, as many will have it, he is not thought today to have done this except insofar as it is necessary for the common good, although now minds incline more toward asserting obligation of conscience. Hence, the gravity of penal compensation can be an indication of a merely penal law. Nevertheless not rarely there will be added an obligation of natural law. And again the authority of doctors is to be held in very high account.

Yet violation of law from formal contempt of law or authority would always be grave. And the observance of law, such as is practiced by upright men, is to be inculcated upon all.

IV. Those things alone can be prescribed which conduce to the common good and pertain to social communication. Such are not internal acts; but truly such are hidden acts and acts mixed in various ways.

V. The application of the rule concerning "non-retroactivity" is to be understood thus:

1. The milder penalty is applied to the accused.
2. Acts remain valid if the required conditions were fulfilled when the act was posited, unless perhaps it can easily be repeated.
3. Effects produced before the new law always subsist; but the future efficacy of a valid act or of a juridic condition is to be estimated according to the new law.
4. The effects of agreements must be computed from the law under which they were made.
5. Finally a new procedural order is applied even to old causes, because it is judged better than the preceding.

Authority of the people. I. The people, as such, is not, in a constituted perfect society, the legislator. Therefore what they can do in regard to law must be derived from the prudently demonstrated will of the legislator. Now:

1. Through epikeia, a law can be held as suspended, until a response is obtained to difficulties legitimately proposed, v.g. by bishops to the Holy See. Say the same during appeal to a Superior.
2. Laws are confirmed by morals, insofar as general non-observance, unless the legislator expressly contradicts it, dispenses all from observing the law.
3. The mandate of the Ordinary concerning the observance of certain general laws which change diocesan usages can also prudently be awaited.
4. Custom is the best interpreter of laws.

II. Custom, which, as it is a thing of fact, is said to be a frequent mode of acting and the inclination arising thence to act similarly, as a thing of law is defined: a right introduced by the long-standing morals of the people. And thus it differs from prescription, which begets a subjective right, but not a norm of law. Every right of custom supposes some consent of the legislator, at least given generally, to reasonable customs, whether beside or against the law (cc. 27, 28); a people, or community for which law can be made; morals of the people, or frequent, uniform, public, deliberate acts, begetting an inclination; a long time, which now is of forty continuous and completed years. Custom by connivance is prescribed by a shorter time; while centenary and immemorial customs require either one hundred years or that the origin has escaped memory. The morals of the people must be reasonable, and consequently not expressly reprobated, especially as a corruption.

Division. There is custom according to law, which confirms and explains law; beside law, which adds to law; against law, which derogates from law: a special custom can derogate even from a universal law. There is general custom, indeed most general custom, or of the whole Church, while custom of a province is general; special custom, or that of a lesser community. The style of the curia is referred to

special custom. There is ordinary or privileged custom: centenary and immemorial, which practically are equated, except that a clause revoking centenary customs does not yet revoke immemorial customs.

Custom ceases intrinsically through a contrary custom or a contrary law. A particular law abrogates particular customs; a universal law permits these to subsist, unless it expressly says otherwise, through a derogatory clause.

The secondary forms of laws are an instruction, which rather explains the law and not rarely at the same time defines certain things, and decrees of a king or of the president of the republic. This kind is common to both. Since they are accessory, they neither prevail over the law nor survive an abrogated law.

But through general decrees of Congregations, true pontifical laws are sometimes made.

On ecclesiastical law. I. Names. Neither special solemnity nor written form is prescribed to be observed by the ecclesiastical legislator. According to varied form there are distinguished: an Apostolic Constitution, or more solemn law contained in a Bull, which is inscribed: *Pius, Servant of the servants of God*; a Brief, which is given under the ring of the Fisherman; Encyclical letters, which are directed to a certain universality of persons; the words *Motu Proprio*, which demonstrate a spontaneous origin. Decrees are both of Councils and of Roman Congregations. Through rescripts an outside petition is satisfied. Laws are issued by living voice in a consistorial allocution. If they are contained in some Code, individual laws are called canons. Statutes designate laws made by non-pontifical authority, or also ordinances of the internal government of a college or moral person, such as a chapter, confraternity.

II. Promulgation by the Holy See now takes place regularly by insertion in the *Acta Apostolicae Sedis*; no special form is prescribed for bishops, who not rarely pronounce laws in synod.

III. Vacancy. Disciplinary laws, but by no means laws concerning faith or morals or those declarative of divine law, regularly are vacant for three months from the day inscribed on the fascicle of the *Acta Apostolicae Sedis* by which they are promulgated.

IV. The extension of universal law is to all the faithful. Yet Orientals are regularly exempt from disciplinary pontifical laws. Particular laws are presumed territorial, and regularly do not oblige subjects outside the territory for which they have been given.

V. Force of laws. A law is not presumed to be invalidating; ignorance prevents the penalty but not the effect of invalidation. In doubt of law, even an invalidating law does not urge; and in doubt of fact, dispensation can be given by the Ordinary, if the Pontiff himself is accustomed to dispense in that law.

VI. Duration. Laws of themselves remain until they are revoked. But a general law of itself does not derogate from a special law of places or persons. Yet the Code has removed laws even particular laws opposed to itself, as also customs which are not centenary or immemorial.

VII. Author of law. 1. The ecclesiastical hierarchy, or series of persons who in various degree participate either the power of order or of jurisdiction, or both, is of divine origin in itself, yet not in the individual persons by whom it is participated. It is of divine origin in the Supreme Pontiff and generically in bishops.

2. The first grade is occupied by the Supreme Pontiff, who, for exercising his universal jurisdiction, uses the Sacred Congregations, Tribunals, and Offices of the Roman Curia, and various Delegates. He himself also constitutes abbots or prelates nullius and prelates of clerical religious institutes. An inadequately distinct subject is an ecumenical Council. The second grade is that of residential bishops (titular bishops, as such, have no jurisdiction), with perfect ordinary power. In their curia there occur the vicar general, who is also the Ordinary of the place, the chancellor, and the official of justice. The bishop is aided by the chapter of the cathedral church, or, where a chapter is lacking, by the assembly of consultors. Over the districts into which the diocese is divided there is placed a dean or vicar forane with some function of inspection. In the diocesan synod, which is to be convoked in each ten years, the bishop alone is legislator.

When the see is vacant, the ordinary jurisdiction of the bishop passes into the cathedral chapter, which must, within eight days, pour it all into the capitular vicar.

Several dioceses constitute an ecclesiastical province, over which presides, with limited jurisdiction, the Archbishop or Metropolitan, the judge of appeal, while the other bishops of the same province are called suffragans. The Metropolitan himself must once for all, with the Holy See approving, choose from among the suffragans a judge of appeal from his tribunal. The provincial Council, to be celebrated every twentieth year, is constituted especially of bishops of the province and archbishops or independent bishops, who must once for all choose for themselves the provincial council at which they assist. Patriarchs, who are merely honorific in the West, in the East are supreme pastors of some rite.

A plenary Council of several provinces is not gathered without the permission of the Holy See. The decrees both of a provincial Council and of a plenary Council cannot be promulgated unless after they have been approved by the Sacred Congregation of the Council.

3. Legislators in the Church are the Roman Pontiff, whether alone or in Council; whether by himself or through the Roman Congregations. Within the ambit of the power granted, the Roman Congregations and Pontifical Legates are legislators. Next are the plenary and provincial Council; Bishops and Prelates of similar jurisdiction; when the see is vacant, the cathedral chapter and then the capitular Vicar; the general Chapter of exempt clerical religious Orders; sometimes provincial chapters; rarely the General Superior himself.

Bishops, by their laws, further determine universal laws and apply them to the diocese.

VIII. Subject of law. Universal laws of the Church oblige of themselves all the baptized who habitually are masters of themselves, even heretics and schismatics, with a certain exception saved for marriage. Yet as regards laws which directly regard the sanctification of persons, not a few exempt non-Catholics who by birth itself belong to constituted sects; and certainly they can be left in their good faith. Those doubtfully baptized, in the external forum, if baptism has been probable, are subjected to the laws; in the internal forum, the principle can be applied: no one is held by an uncertain law. The habitually insane are not held by merely ecclesiastical laws, nor those who because of age do not possess sufficient use of reason or are not older than seven years, except for the precept of annual confession and paschal communion, and with delicts also excepted. Yet penalties

latae sententiae are not incurred by the impubes; and from the law of fast the faithful before twenty-one completed years and after sixty begun years are exempt. Particular laws of a territory oblige inhabitants, i.e. those who have domicile there; sojourners, i.e. those who have quasi-domicile there; and transients. Pilgrims, i.e. those who are staying outside their domicile or quasi-domicile, are of themselves immune.

Domicile, or stable seat, is either necessary, which the law assigns to a wife, an insane person, and one less than twenty-one years old, or voluntary, which is acquired by dwelling in some place with the intention of perpetual residence, if nothing calls away; or by dwelling prolonged for ten continuous years. Quasi-domicile is gained by dwelling conjoined with the intention of remaining there for the greater part of a year or, in reality, prolonged beyond six months. Each can be had either in a diocese or in a parish; and, if it has been voluntary, it is lost by departure from the place with the intention of not returning.

Inhabitants and sojourners are held in the territory by the particular laws of the place; indeed also when absent, if the laws are personal or if their violation harms in the proper territory. Pilgrims are held by universal laws in places where they are in force; outside their own territory they are held of themselves neither by the proper laws of their own territory nor by the proper laws of the territory where they are, "except laws which provide for public order or determine the solemnities of acts."

There are also exempt places. The house of an exempt religious institute is not fully exempt, but only by reason of the religious.

IX. Authentic interpretation of law is made by law, sentence, or rescript. Insertion in the *Acta Apostolicae Sedis* proves authenticity, but not the force of universal law of rescripts which are inscribed as directed to definite persons or regions. A declaration outside the *A. A. S.* is juridically ignored. Rescripts emanate from various Congregations; nevertheless the authentic interpretation of the Canonical Code is reserved to the special Pontifical Commission. An authentic interpretation by way of law must be promulgated, if the law was doubtful.

X. Computation of time, saving liturgical laws. 1. An hour, consisting of sixty minutes, is to be estimated of itself from the common usage of the place, with the option nevertheless made, for various obligations, of true, mean, legal, or extraordinary time. 2. A day consists of twenty-four hours, to be computed from midnight. 3. A week indicates, unless the law establishes that the week is to be taken as in the calendar, seven intervals, even non-continuous, of twenty-four continuous hours. 4. A month and a year, if they are not taken as in the calendar, designate respectively thirty and three hundred sixty-five days. When designated by their proper name formally or equivalently, or when continuous time is assigned, they are taken as in the calendar. 5. If the terminus *a quo* is assigned neither explicitly nor implicitly, time is computed from moment to moment. If the time *from which* is assigned, with the special case excluded of acts which, like vows or an election, are renewed at stated times: either it coincides with the beginning of the day, and then the first day is computed, so that when the last day of the same number has begun the time is finished; or it does not coincide with the beginning of the day, and then the first day is not computed, so that the time is finished only when the last day of the same number has been completed. But the last day of a shorter month, v.g. 28 February, is held as the day of the same number as the final days of a month which has more days. If the time is shorter than a month, the day of the same number is that on which the number indicated by the very space is repeated: the eighth day in an octave. 6. If acts recur after stated

intervals, the time is finished when the same day on which it began recurs, with consideration of the hour neglected. As regards obligations of contracts, civil rules have force of themselves.

Continuous time does not admit interruption; useful time does not run for one who is ignorant or impeded.

XI. Privileges, in order that they operate in the external forum, must be duly proved. Of themselves, they are judged perpetual; with the clause "at our good pleasure," or a similar one, they are extinguished when the right of the one granting is resolved. Habitual faculties (even for a certain number of cases) are reckoned among privileges beside the law, and pass to Ordinaries as successors. Personal privileges pass with the person, real and local privileges with the thing and place; local privileges revive if the place is restored within fifty years.

XII. Dispensations. I. Author. 1. The Supreme Pontiff dispenses in every ecclesiastical law, but in no divine law; yet, for a just cause, he can relax a bond supposed by law. 2. Ordinaries do not dispense from pontifical law unless dispensation is expressly granted to them, or unless recourse to the Holy See is difficult, there is danger in delay, and dispensation is customarily granted by the Pontiff. Express faculty is given to Ordinaries of places in doubt of fact, in sacred times, in non-reserved vows and oaths, in interstices, in banns, in impediments of marriage, in irregularities from delict, in penalties, in prohibited books, in the examination of parochs. They also obtain peculiar faculties from the Sacred Penitentiary, from Propaganda Fide, or from the Sacred Congregation of the Council or concerning the Sacraments. They can dispense in laws to which is added: unless dispensation is given; in laws of a plenary or provincial Council; in synodal statutes. 3. Major Superiors of exempt clerical religious institutes come under the name of Ordinaries, and, as such, participate the mentioned faculties, with the exception of banns, impediments of marriage, examination of a paroch, the benefit of the clause "unless dispensation is given," decrees of a plenary or provincial council, and synodal statutes. They have besides special faculties. 4. Parochs dispense in sacred times and impediments of marriage. 5. Superiors of an exempt clerical religious institute, in sacred times. 6. Confessors in the conditions of indulgences. In more urgent cases, they can suspend penalties and absolve from reserved censures; and they also have a certain power in impediments of marriage. Regular confessors have privileges proper to themselves. 7. The priest assisting at marriage dispenses in impediments of marriage by reason of a more urgent case.

Power given for individual cases permits a special concession and not beyond what the present necessity requires.

II. The subject of dispensation is subjects everywhere, and transients in the territory where they are staying. Pilgrims are also subjects, when there is question of sacred times, vows and oaths, and more urgent cases for marriage and censures. Penitents are those whose confessions can be heard. An inferior to whom a general faculty of dispensing has been given can dispense with himself, but not of itself a confessor. With the Superior agreeing, Regulars can be dispensed by the Ordinary of the place, at least in cases in which their own Ordinary lacks faculty.

III. The obtaining of a dispensation for another is valid; and it holds in doubt concerning a sufficient cause.

IV. The use of a personal dispensation is of itself permitted everywhere. Nor does a dispensation cease if the motivating cause subsists in part, or if the removal of the cause has been doubtful.

On Rescripts. I. A rescript, or a response given in writing at the instance of one requesting, is of justice or of grace. From the Pontiff or from an Ordinary all, with the exception of a few excommunicated, suspended, or personally interdicted persons, can obtain rescripts for themselves or for others, which have force even before acceptance.

II. Validity is subordinated only to the particles *if*, *provided that*, or equivalents, and to the general condition: if the petitions rest upon truth. This clause must be true at the moment either of the grace given without execution or of execution. The truth of one motivating cause is always required, even if the rescript is given *Motu Proprio*. Yet except dispensations in lesser impediments of marriage. Errors in the designation of person, place, or thing do not stand in the way of validity.

III. The executor must be notified by authority concerning his faculty; he cannot deny execution if execution alone has been entrusted to him; otherwise if the concession is committed to his judgment. He must make execution in the external forum in writing; he can correct an error in a new execution; nor is he of himself prohibited from substituting another for himself. A rescript to which either no executor or an executor distinct from the Ordinary is designated does not of itself have to be presented to the Ordinary.

IV. By the vacancy of the see of the one granting, only those rescripts cease which have this clause or, while the matter is entire, which contain a particular grace to be made to persons designated in the rescript.

V. Recourse from one Superior to another, when a prior rejection has not been manifested, is sometimes invalid, sometimes merely illicit.

On the Roman Curia. The Roman Curia, distinct from the Pontifical Court and from the Vicariate of the City, consists of the Sacred Congregations, Tribunals, and Offices.

For all these, norms are prescribed by the Supreme Pontiff; secrecy, more or less rigorous, is imposed. They must make known to the Supreme Pontiff whatever is grave or extraordinary; and, with special faculties and the sentences of tribunals excepted, submit graces and resolutions to him for approval. Special commissions of Cardinals settle controversies concerning competence.

I. The Sacred Congregations essentially consist of Cardinals, to whom are added a Secretary and Under-Secretary (one or more), Consultors, and minor Officials. Competence is defined either by matter or by territory.

In their province they give general decrees and instructions; authentic interpretations; dispensations and graces; finally they settle causes by the disciplinary and administrative way.

Today eleven Congregations are numbered: the Holy Office - the Consistorial - that Concerning the Discipline of the Sacraments - that of the Council - that Set over the Affairs of Religious Sodales - that of Propaganda Fide - that of Sacred Rites - the Ceremonial - that for Extraordinary Ecclesiastical Affairs - that concerning Seminaries and Universities - that for the Eastern Church.

There is also the Congregation of the Reverend Fabric of St. Peter, not named in the Code, which, with the Congregation of the Council, has a common faculty of reducing the burdens of Masses and of pious legacies.

II. There are three Tribunals. 1. The Sacred Penitentiary (to which all can have recourse), for matters of the internal forum. 2. The Sacred Rota: the ordinary tribunal of appeal. 3. The Supreme Tribunal of the Apostolic Signatura, which is as it were a Court of cassation.

III. The Offices are: 1. The Apostolic Chancery, for expediting bulls. 2. The Datary, for conferring non-consistorial benefices. 3. The Apostolic Camera, for caring for and administering the temporal goods and rights of the Holy See, especially when the See is vacant. 4. The Secretariat of State, which has three parts: concerning extraordinary affairs, concerning ordinary affairs, concerning the expedition of briefs. 5. The Secretariats of Briefs to Princes and of Latin letters, through which the Pontiff cares that his Latin acts be written.

On civil law. Civil laws today are made generally by the consent of a double Parliamentary assembly and by the sanction of the Prince or President of the republic. The Prince or President also makes decrees, which must always at the same time be countersigned by a minister, so that there be someone who answers for them.

Civil laws have customarily been promulgated by insertion in an official periodical, and are accustomed to be vacant for some days.

The Supreme Pontiff alone is divinely exempt from civil laws. Other clerics are exempt by canonical law alone and as regards the coercive part. Indeed the Holy See sometimes renounces by concordats the privileged forum for civil causes and for criminal causes of clerics lower than a bishop; or it admits contrary customs. Elsewhere it is silent and generally strives to obtain this, that without the authority of the Holy See a bishop not be dragged before a lay forum. Clerics will try to avoid penal lawsuits; when cited they will ask their Superiors; when magistrates ask, they will advise that the due permission be secured; they will not disturb the good faith of the many. But they themselves will not sue other clerics before a lay tribunal without permission.

No law today generally canonizes civil laws; yet in certain matters the application of civil law in the canonical forum has been commanded.

After the excessive individualism of the nineteenth century, civil laws now incline toward the opposite excess, by which the liberty of individuals is more and more circumscribed. It is difficult to define how far the liberty of individuals can be coerced.

Conclusion — On Laws Compared Among Themselves and with Human Liberty

— I. Common character of every law. Every true law is a principle of unity. For through every law, men are directed in a harmonious manner to a social or common end. Since this end is the good immediately of all under the common quality of members, and mediately of individuals - for Society itself, sooner or later, exists for physical persons - the law which effectively leads men to that end is also of itself for them a principle of perfection and happiness. Therefore they err greatly who conceive or present law as hateful or hostile to man.

II. On divine law. 1. Yet without divine law, human law cannot truly be for individuals a principle of beatitude. For those who preside over the republic are compelled, on account of the common good, to command many things by which, directly or indirectly, citizens are deprived of temporal goods and of life itself, without any compensation of human or earthly good. Divine law alone, since it

remunerates according to merit the moral value of every good action, effects that in the higher order we recover what has been lost in the lower order, and thus magnificently repairs that unnatural divorce by which happiness is torn away from morally more excellent action.

2. There is no human action which is not touched by divine law, since in every human action that supreme law must be observed by which every deliberation of ours must be a movement toward the end, or God. Therefore divine law is universal in its extension.
3. Insofar as it is a means to the end, it also has this excellence, that not even in the smallest part does it fall short of its primary end, which is the glory of God. Whether men obey divine law or resist it, they cannot take His glory away from God.
4. Therefore also divine law, without any definitive detriment of order, can leave to man the whole psychological liberty of acting otherwise than it commands. Therefore no broader and purer tolerance of evil can be devised than the divine.
5. But insofar as it pursues the intrinsic good of men, divine law, both natural and supernatural in the economy of the New Testament, agrees with the inborn appetite of the human will, by which it requires God as natural end, by which it also desires Him as supernatural end, to be possessed in Himself, if only divine munificence deigns to supply the essential defect of our proportion to such an end.

Wherefore he who, by obeying divine law, does the divine will, at the same time more perfectly fulfills his own proper will, and perfects his internal unity: his particular choices correspond to its general and unconquerable intention.

6. The same law of the present economy helps us to act well, both by the external stimuli of the truths which it teaches, of the examples of Christ which it proposes to be imitated, and by the internal motions of the Holy Spirit by whom it is continually written in our hearts; and especially when we approach the sacraments which are fountains of graces. And thus, while it procures for man the faculty and facility of execution, it becomes for him the principle of an inestimable moral liberty.

III. On human law. In our present condition, human law is deficient in its extension, since it cannot affect even all external actions of men, and consequently cannot prohibit all evils. Thence it is deficient in its tolerance, since unwillingly it is compelled to bear evils which it does not know how to recall to a better order. It is deficient in its finality, since it procures the end of the common good only imperfectly. It is deficient in its sanction, which is only of penalties, and which many guilty persons escape. It is deficient in its disposition, which sometimes is altogether deceived, and cannot be adapted except to things as they generally are, so that it must necessarily suffer accidental "failings." To guard against harmful excesses, human law must impose limits upon our physical liberty. And since the proper ordinances of human law are not demanded by the very essences of things, they also accord less with the internal aspirations of subjects. Finally, as merely external, it can foster and promote the moral liberty of man far less than divine law can.

But by divine law, human law is wonderfully aided, since from it it borrows light for directing, efficacy for coercing, and sweetness for obtaining willing docility.

IV. Obedience of Catholics. Worshippers of the true religion find in that divine law motives of a more sublime, easier, and fuller docility for obeying even civil laws. Of a more sublime docility, by obeying powers as ministers of God [1]; of an easier docility, by obeying as ministers unto good (2); of a fuller docility, by obeying not only to the eye but as servants of Christ, doing the will of God from the heart (3); and thus "purifying their souls in the obedience of charity" (4).

But what is by no means to be passed over, these motives of a more perfect docility destroy no reason of obedience which can remain available to non-Catholics or unbelievers.

If, therefore, we probably opine that several civil laws are only penal, let the adversaries of Catholics not be scandalized from this, nor pretend that they are scandalized. For even then there remain for us Catholics all the reasons of obeying which alone explicitly suffice for our honest adversaries for obeying every law. Therefore for us a law, even a penal one, is fortified and surrounded by the supports by which alone every law is protected by our adversaries. Indeed even such a law is urged upon us by the supreme law of every action of ours, which we must preach after the Apostle saying: "Let all your things be done in charity" (I Cor. 16, 14).

[1] Cf. Rom. 13, 1. 6. - (2) Likewise 13, 4. - (3) Eph. 6, 6. - (4) 1 St. Pet. 1, 22.

Summary

I. Every law is a principle of social unity, and consequently of perfection and happiness, far from being hateful and hostile to man.

II. Divine law, by its remunerative sanction, removes or prevents the divorce of honesty and happiness; in its extension it is universal; in its primary end, the glory of God, it is never frustrated; without detriment of order it tolerates evil in the broadest manner; it prescribes those things which agree with our inborn appetite; it fosters and promotes our moral liberty.

III. Human law is imperfect, whether you consider its extension, or its finality, or its tolerance of evil, or its dispositions and sanctions, or the aids which it offers to moral liberty. It must restrict the psychological liberty of man; and it issues precepts which are less contained in our natural appetite. But it is wonderfully aided by divine law so that it may command prudently, effectively, and sweetly.

IV. Catholics find in true religion motives of a more sublime, easier, and fuller docility for observing even civil laws. Penal laws also are fortified by motives of obeying which, for unbelievers, alone surround all obedience of citizens to be rendered to laws. Indeed the observance of a penal law is urged also by the supreme law of charity.

Treatise IV: On Conscience

I. - Introduction of the Treatise

Usefulness. The treatise of the greatest moment concerning the proximate rule of human actions must be introduced by a few notions, which prepare a distinct solution of questions not so plain and at the same time very practical, which are to be proposed in this treatise.

— I. What conscience is. Conscience, properly so called, is the knowledge which we have of several acts of our life, whether sensible or rational. For the functions of vegetative life lie hidden from our direct consciousness. Therefore it can be described thus: Cognition or attestation of one's own internal fact.

And this is psychological conscience, or conscience properly so called. But at the same time there accompanies us a judgment concerning the moral value of those same acts of ours. That is, spontaneously, according to moral principles, we judge concerning our action. This is called moral conscience. As, therefore, we distinguish psychological and moral liberty, so we distinguish psychological and moral conscience. St. Thomas treats of each conscience, *De veritate*, q. 17 art. 1.

Moreover judgment concerning our action is made according to moral principles. But the most universal moral principles - good is to be done, evil is to be avoided; precepts are to be fulfilled, promises are to be kept - become known to us most easily because of the inborn habit which, from a Greek word, the Scholastics call *synteresis*. Therefore synteresis is the natural habit of the first moral principles. And we call moral principles general dictates concerning things to be done, in order to the end of human action.

Therefore moral conscience itself is described: a moral judgment concerning our particular action to be done or done, to be omitted or omitted, according to moral principles.

— Conscience is the rule of morals. Human acts do not find their proximate rule in conscience in the same way in which they find their remote rule in law. Law is an act of a Superior; conscience is an act of a faculty belonging to the subject: law establishes the order, conscience knows the established order and consequently presupposes it; law commands, conscience intimates the precept of the law. Therefore conscience is the herald by whose mediation the laws of our actions are applied to us.

But that conscience is in this way the proximate rule of our human actions is clear from this, that the will is a rational appetite, whose object is not the thing as it exists outside us, but as it is present intentionally (or in the expressed species) in our intellect.

— II. How many kinds of moral conscience there are.

1. The moral judgment concerning our human action precedes and accompanies our act, or follows our act. Hence there is distinguished antecedent conscience, concerning an action or omission at hand, and consequent conscience, concerning an action or omission done.

2. According to the varied conclusion of its judgment, antecedent conscience is obliging, counselling, permitting, forbidding, according as the appetible thing presented is pronounced by it necessary, desirable, of free option, or to be rejected.

But consequent conscience testifies what we have done morally, and, according to the moral nature of the action, approves it, praises it, excuses it, condemns it. Here the appetitive faculty naturally inserts itself, of itself content concerning a good action, afflicted concerning an evil one, so that there is a testimony pacifying and quieting; and remorse, of itself penal.

3. Conscience, like every judgment, of itself is right, or speculatively true, insofar as it dictates what is true. Yet by accident it will be erroneous, and that either vincibly or invincibly. But conscience which errs invincibly is nevertheless called right in a qualified way, i.e. in relation to the agent.
4. Conscience can be certain or doubtful. Certain conscience judges without fear of the opposite. Doubtful conscience of itself does not judge concerning the action, or reports nothing else except that the action is of doubtful honesty. But by the command of the will (which is moved by some perceived reason of good, v.g. of quiet itself from laborious investigation), doubt or suspension between each part can be converted into an opinionative judgment, at least on that side on which some motive of deciding appears. That judgment is made with fear of the opposite. But since that inclination of the intellect is made from the command of the appetitive faculty, there is not more of truth in opinion than in doubt properly so called.
5. Since conscience properly so called regards our action as such, of itself its certainty or doubt is practical. Nevertheless speculatively and practically certain or doubtful conscience is distinguished. The former is concerning the quality of the action considered in itself; the latter concerning the action as it will be done by me in the concrete.

What certainty is considered here. But observe that in our present condition we must be content, in practical matters in which principles must be applied to contingent facts, with a certainty less strict than that which is proper to speculative science. This certainty is called moral, because, according to the common estimation of men, it is sufficient for acting. "When I say conscience," says St. Thomas, "I do not say or imply knowledge only strictly accepted, as it is only of truths, but knowledge accepted in a broad way, for any cognition whatsoever, according as, in the common use of speaking, we are said to know everything which we know" [1]. Thus we say that we know what one upright man tells us is established to him; thus we think ourselves certain concerning validly received baptism, etc.

6. Since what is reported to us is not the habitual state, but the present fact of our life, conscience properly so called always signifies an act. There is no habitual conscience. Yet for rightly judging we are aided by habits. Hence, besides actual conscience, there is also distinguished habitual conscience, which is a habit or inclination, partly acquired, toward making moral judgments. Improperly, however, conscience is sometimes called the very potency or faculty of eliciting moral judgments.

[1] *De veritate*, q. 17 art. 2 ad 2.

— How many kinds of habitual conscience there are. Taken for a habit, conscience is called tender or timorous, which with outstanding rectitude discerns slight reasons of good or evil.

Scrupulous is that which is agitated in its judgments by illegitimate fear.

Lax is that which is accustomed to be deceived by false excuses. It can also be called harder, insofar as, when the reason of evil has been perceived, it is moved with greater difficulty.

Strict, on the contrary, or rather rigid, is that which cannot use an equitable tempering of obligations, or epikeia: therefore it is incomplete.

Pharisaic is that false conscience which the Lord noted in the Pharisees: these, strict in the smallest matters, were found lax in greater duties, or also by a certain graver hypocrisy were disguising those things from themselves and others (Cf. St. Matt. 23, 23-24 [printed: 24, 24]).

Finally, cauterized is the false conscience which is almost lacking in the very sense or appetite of honesty. The name is taken from 1 Tim. 4, 2.

The distinction of conscience into actual and habitual divides the treatise into two titles, one concerning actual conscience, the other concerning habitual conscience.

First we shall speak of conscience as it is an act, then of the habit.

Summary

— Conscience properly means knowledge or immediate relation concerning our internal facts. This is psychological. In moral theology it is the moral judgment which, according to principles of things to be done, we elicit concerning our action. It is distinguished as antecedent and consequent, according as it precedes or accompanies and follows action; right or erroneous, according as of itself it judges according to truth, or by accident errs, whether vincibly or invincibly. It is also certain or doubtful, and that speculatively, concerning the action considered in itself, or practically, concerning the action as it will here and now be posited by the agent. With the appetitive part intervening, there is the quieting testimony of a good conscience, and the remorse of consequent evil conscience.

As the herald by whose mediation the laws of our actions are applied to us, conscience is the proximate rule of our actions.

Because of the moment which is in habits, besides actual conscience, habitual conscience is also distinguished; this is a habit, partly acquired, of making moral judgments. Habitual conscience is called, according to its varied quality, tender or timorous, scrupulous, lax, strict or rather rigid, pharisaic, cauterized.

Title I: On Actual Conscience

Usefulness. - This whole title is most necessary in moral theology, since it explains the proximate rule upon which every moral judgment must rest.

Chapter I: On the Force of Certain Conscience

— Practically certain conscience is always to be followed. Wherefore whether it be speculatively true or erroneous, the action will in reality have the goodness or malice which conscience proposes.

This is clear from Genesis 20, 4-7, where the excuse of his ignorance which Abimelech alleged is approved by God, and from the passage of the Apostle, Rom. 14, 14. 22. 23, compared with 1 Cor. 8, 11, where St. Paul teaches that conscience is polluted because of an action which is falsely thought illicit. And the reason is, because by the will by which a Superior wills something to be observed, by the same will he wills that obedience be given to the one herald, designated by him and faithful of himself, through whom alone his commands are intimated. But conscience performs the function of such a herald. For the rest, since the object of the will is the action as it is proposed by the intellect, the act receives its species from the object, "not according to the matter of the object but according to the account of the object" (St. Th. Quodl. 3, art. 27).

Wherefore the sin committed against a right conscience and the sin committed against an erroneous conscience do not differ in species.

Yet the act must always be supposed human. Wherefore involuntary distractions will not be imputed to him who erroneously thinks those same things to be sins.

— What if the conscience of ignorance or error has been culpable?

If while acting, the unskilled man does not advert to his ignorance, he has an actually invincible conscience, which by following he cannot actually sin. Yet he will bear the consequences of the harmful action, if any were sufficiently foreseen in the prior fault.

If while acting he was mindful of his ignorance, he ought to have inquired concerning the matter or abstained from the action.

Yet what if the action is necessary and the opportunity of inquiring is lacking: suppose an ignorant priest, who alone comes upon a sick man for whom death is imminent. Then his ignorance is reduced to invincible, nor will the error be imputed to him, unless, from the office which he bears, he could easily have foreseen that these circumstances would occur.

If, with inquiry omitted, he does not abstain from the action, the ignorant man will sin whether he acts according to or against the dictate of his conscience. And by acting according to the dictate, he will sin by his negligence and will be guilty of the evils which he foresaw confusedly. But by acting against conscience, he will besides sin by the sin apprehended through actual conscience.

A vincibly or invincibly erroneous conscience will be judged both from the presumptions which the matter and the person permit (with attention paid to his piety and learning), and from fitting interrogations of the agent: a) whether he adverted to any indecency in the act; b) whether he doubted concerning the liceity of the action; c) whether conscience warned him concerning a grave or light obligation of inquiring.

Summary

— Practically certain conscience is always to be followed, with the imputation of error culpable in its cause nevertheless saved. Even one guilty of conscious negligence will sin more by acting against conscience commanding or forbidding than according to it. But a vincibly or invincibly erroneous conscience must be prudently estimated.

Chapter II: On the Force of Practically Doubtful Conscience

— He who practically doubts concerning the honesty of his action, by acting sins with a sin of the gravity and species concerning which he had prudent suspicion. For he hypothetically consents to the violation of law, and consequently has an affection inclined toward the violation of the law obliging him: which is forbidden by divine natural law, which urges the fulfillment of individual laws. Therefore he acts against a certain conscience, although a confused one, by which even an unlearned man detects that an action of suspected honesty is not permitted to him [1].

And although he doubts concerning a merely human law, he makes the action intrinsically dishonest: for he sins against the natural law.

[1] Insofar as he doubts, conscience does not judge concerning the matter. Wherefore a doubting conscience is not the rule of action.

— Obligation of one practically doubting. He who practically doubts concerning the honesty of his action must, if he can, embrace the safer parts or put away the doubt by sufficient inquiry, according to the rules to be handed down later.

Moreover that investigation will be sufficient which is accommodated to the moment of the matter and to the capacity of the agent. Thus the more learned man, in a grave matter, will not be able to trust a simple priest, but must examine the matter by himself, while the unlearned man will not be able to trust himself, but, v.g., will have to ask his priest or someone whom he judges fit. Yet the very narrowness of time will be able to dispense from a fuller investigation which otherwise would have to be made, when proportionate harm is to be feared from the delay itself. For since then there is not the moral opportunity of greater diligence, the ignorance which remains will be able to be held as invincible. Wherefore even an unlearned man will then be able prudently, according to his measure, to solve the case by himself.

— Sin of one neglecting. Does he who acts by neglecting a founded but confused suspicion of malice sin gravely or lightly?

The matter seems to be judged from the concrete circumstances. If the man has been of a timorous conscience, or the object of itself has appeared light, it can be presumed that there was no doubt concerning grave sin, except perhaps an empty fancy. On the contrary, you will pronounce more severely if the matter at first appearance spontaneously seems grave, and the agent does not seem alien from grave sin. The matter will often have to be committed to divine judgment. Cf. Laymann, l. I, tr. 2, c. 4, n. 7.

— On a perplexed case. A perplexed case is said to be one where sin is practically feared on every side, whether by acting or by not acting. Of itself, indeed, then the lesser evil must be chosen; wherefore a natural precept must of itself be preferred to a positive one, and a divine precept to a human one. But if the gravity has appeared morally the same on each side, the very supply of free option is not had. For which reason, however you bear yourself, you will not actually sin, even if the perplexity has arisen from culpable negligence. And they observe that there will be only a light sin of

him who, since he does not discern a notable excess, has made the choice of the part which is feared to be worse.

Summary

— Practically doubtful conscience, as such, judges nothing, and consequently cannot be a rule. One practically doubting concerning the honesty of his action makes the matter intrinsically evil. Nevertheless a human duty of inquiring is imposed upon us; and, in a perplexed case, one does not sin by choosing for either part which seems to him to be of almost equal danger, or for the part which he estimates to be of lesser danger or moral evil.

Chapter III: On Speculatively Doubtful Conscience

Order of speaking. In order that we may procure for ourselves a distinct knowledge of a matter which, both on account of many applications and on account of controversies, has become sufficiently encumbered and confused, greater care must be taken for the due order in our exposition. Wherefore we shall divide this chapter first into two articles, of which the former will be assigned to positively doubtful conscience, the latter to negatively doubtful conscience. But in the former article, in various paragraphs, we shall successively hand down notions; systems or opinions; the demonstration of the true doctrine; the right use of the demonstrated doctrine; the question concerning the probability of fact. Finally in the other article we shall treat of negatively doubtful conscience.

Article I: On Positively Doubtful Conscience, or Conscience Judging Probably

§ 1. Notions

— I. On moral certainty. Certainty in general is defined as the assent of the mind without fear of the opposite. As metaphysical certainty is founded in the immutability of a metaphysical principle, and physical certainty in the constancy of the physical order, so moral certainty rests upon the constancy of the inclinations and morals of men. An exception, indeed, in a particular application is not demonstrated to be impossible; but where there is no reason for suspecting it, to fear an exception is alien equally from reason and from the custom of prudent men. It is alien from reason, because the possibility of error does not create a danger of error, which danger would give a legitimate cause of fear [1]. It is alien from the morals of men. With Aristotle [2] and St. Thomas (3) all easily understand this: "Certainty is not to be sought in the same way in every matter." And they call morally certain that which, although it is not strictly demonstrated, nevertheless is assailed by no serious reason and is supported by reasons persuasive in a human way, under which, nevertheless, in some case, falsity can lie hidden. Thus we are certain concerning the baptism which the priest, the minister, testifies that he conferred upon us.

Hence, under another respect, moral certainty can be called that with which men are accustomed to be content in acting. St. Thomas, in the place cited, calls that certainty probable, i.e., such "as for the most part attains truth, although in fewer cases it falls short of the truth" [1].

But if it is established, in a particular application, that an exception is excluded by a certain argument (v.g., in the demonstration of the Catholic religion, or in certain points historically proved by several witnesses), there will be moral certainty more strictly than when simply the reason of exception does not appear.

Moral certainty excludes not every fear, but only prudent fear.

But by an extended name, a judgment is called morally certain which, although in itself it is only probable, so that it can found only opinion, nevertheless practically permits the application of a certain moral principle, such as this one is: in doubts one must answer in favor of liberty (cf. Schiffini, *Princ.* n. 34, obj. 4).

Certainty then, in this latter case, is only practical, while that which is properly called morally certain is speculatively certain.

To this also belongs the case of a proposition which is urged only by a probable argument, to which nevertheless no positive argument is opposed. That opinion will be called morally certain insofar as it is certainly permitted to act according to it.

Therefore that is called morally certain equivocally which is demonstrated by convincing reasons from the morals of men, and that which merely rests upon a probable reason to which there is no contradiction. The former certainty also has a place in the logical part of philosophy; the latter is proper to the moral discipline.

Finally, by a different use, all certainty which is to be attributed to the command of the will is called moral.

[1] Schiffini, *Principia philosophica*, n. 232.

[2] *Ethic. Nicom.* L. I, c. 1 and c. 3. - (3) 2, 2, q. 70, art. 2.

[1] For this reason Aristotle was able to define (I *Top.*, c. 12) a probable opinion: "that which seems true to all, or to most, or to the wise, and either to all, or to most, or to the most notable."

— II. On doubt and probability. 1. Even after the diligent inquiry which is prescribed has been made, according to the merit of the cause and the abundance of investigation, we do not always arrive at certainty, even moral certainty; but, after the reasons for and against have been weighed, the intellect of itself remains doubtful, or, at the command of the will, assents to one part with a reasonable fear of the opposite: "it indeed accepts one part, yet always doubts concerning the opposite" [1]. Then it is found in the state of one opining [2].

When assent is suspended, the state of mind is called strict doubt. Strict doubt is also had when reasons appear for neither side (v.g., whether the stars are even in number). Yet this much differs between the two cases: when reason is lacking, the state of strict doubt is incurable; while, when there are positive reasons, the very suspension of mind can be removed by bringing in the state of opinion or of an opinative judgment. This state is called broad doubt. In it, nevertheless, as we noted above, n. 340, no greater truth is perceived than in strict doubt.

2. Moreover, "a probable opinion is generally considered to be that which rests upon a grave foundation, although not altogether certain, and at the same time has against itself no convincing reason" [3]. But a grave motive is that which, not only simply or separately, but also comparatively, or with the opposing reasons looked through, inclines a prudent man to assent, although it does not determine assent [4]:

a) From the object, probability of law and probability of fact are distinguished, in the same way in which, n. 55, we separated ignorance of law from ignorance of fact;

b) From the source whence it is drawn, intrinsic or extrinsic probability is distinguished, according as the motive of assent is taken from intrinsic reasons or from the authority of doctors. It would be better to say probability known from within or from without;

c) From the varying degree of probability, two opinions which are compared with each other can be equally probable, on behalf of which motives of equal or almost equal weight contend; one can be

more probable, the other less probable, when one rests upon motives which are not moderately stronger than the motives of the other, although they do not remove the hesitation of the mind.

[1] St. Th., *De veritate*, q. 11, art. 1.

[2] Schiffini opportunely notes, *Princ.* n. 221, that fear of the opposite can nevertheless be excluded because the mind does not advert to the danger of falsity: which is often the case of the unlearned. He calls this the state of "unperturbed opinion."

[3] Reiffenstuel, *Theolog. mor.* tr. I, q. 4, n. 41.

[4] We think that what is often written must be explained or corrected thus: that a probable opinion is that which rests upon a motive which moves a prudent man to assent. For since a motive does not move the intellect except by its evidence, it would follow that no opinion could be probable unless it were estimated by learned men to be certain.

— Which opinions are to be judged probable?

Preliminary warning. 1. As those things teach us which we weighed in n. 350 concerning the moral certainty with which practically we can and ought to be content, a law or obligation cannot be called doubtful on account of any reason whatever that has been thought up or alleged; rather it is necessary that, all things having been sufficiently looked through, this reason be grave and solid and remain.

Remain, I say. For since probability implies obscurity (insofar as it denies certainty looked through), this obscurity can be expelled, not only by decrees given authoritatively, but also by the approved studies of doctors. Moral science does not ignore progress. And many things which formerly, for some time, were probably put forward, would today be affirmed only rashly.

Thus St. Alphonsus [1] was able probably to assert that excommunication is not incurred by a priest who feigns that he absolves an accomplice: which today, even before the Code, has been wholly exploded by responses of the Holy Office. Thus also that opinion which, because of error, exempts from restitution him who voluntarily applies fire to another's house but which he thought to be that of Caius, while it was that of Titius, seems to us exploded by the very protests of common sense; yet C. de Lugo [2] defended it, and St. Alphonsus (3) judged it probable. Nor do we any longer hold as intrinsically probable the opinion which exempts from injustice a priest who secretly retains for himself part of the stipends of manual Masses whose burden he transfers from himself to others. For the reason for doubting, already well solved by St. Alphonsus (4), is shown to be clearly vain by the excellent and ample dissertation of Fr. Arendt, S.J., "On the Injury to Commutative Justice in the Stipend of a Manual Mass Diminished for Another Celebrant."

Wherefore the present state of the controversy must be attended to.

2. Confusion must be avoided. Once this preliminary warning has been made, lest the answer to be given to the question be wrongly understood, a judgment concerning the probability of opinions must be accurately separated from a probable judgment concerning a thing or action. Concerning many things even the unlearned probably judge; concerning the honesty of an action all can and ought to have at least a probable judgment, although it is obtained in one way in one person and case, and in another way in another. Cf. what is to be said below. But here the matter is about the opinion itself by which, v.g., a certain action is predicated as probably honest.

3. The estimation concerning the intrinsic probability of an opinion requires an examination of the reasons and difficulties: which examination belongs only to experts in theology or in the science upon which the solution depends. Wherefore not even for every priest or confessor is that judgment accessible. Cf. Ballerini-Palmieri [1]. And if the doubt turns upon the interpretation of law, the theologian will not rarely be compelled to borrow light from the jurist.

An opinion is called extrinsically probable to which five or six authors of good name adhere, who have examined the matter and have not merely copied one another without examination. Concerning this probability even the moderately learned can judge, who, once the state of the question has been understood, find probability admitted among several expert and prudent authors who have considered the matter from within.

Indeed, from the authority of one man an opinion can be estimated as probable, although he departs from the common opinion, "whenever, namely, the author is beyond every exception, that is, very skilled in law both natural and positive, who besides has been accustomed to strengthen his conclusions by firm and valid reasons, who is judged a lover of truth rather than of novelty, and finally who has plainly discussed and weakened the arguments of others" (2). Here therefore, as often, probability coalesces from reasons partly intrinsic, partly extrinsic. Cf. B.P. I, n. 185. The more the matter is estimated as doubtful or difficult, and therefore the less there is in that matter a certain common opinion, as, v.g., the question concerning the grave violation of the vow of poverty, the more easily the authority of a prudent and learned man will suffice for the opinion to be judged probable.

But observe this: since authors are not legislators, the whole force of extrinsic probability must be derived from a presumed intrinsic reason.

Yet a distinction must here be observed between an immutable law, such as the divine law is, and laws which can be changed by human authority. Since the Church herself recommends that we follow approved authors, even he for whom the falsity of some interpretation which grave authors defend has been looked through is not prohibited from acting according to their opinion. And after some time received opinions found a usual interpretation concerning which this holds: "Custom is the best interpreter of laws" (c. 29). And in vain then, from monuments, you will have demonstrated another signification of the law, since according to those received opinions the law must be judged to have been tempered. Thus the Code itself, c. 6, 2°, wills that canons which reproduce the old law in full be estimated from the interpretations received among approved authors. Thus, even if you should prove, with attention paid to the first decrees, that all jurisdiction over an accomplice, also in order to other sins, has been taken away from the confessor, nevertheless, since the contrary opinion is that of many approved authors, jurisdiction over the other sins remains probable and therefore practically certain.

[1] *Theol. mor.* l. 6, n. 556. - (2) *De iustitia et iure*, d. 17, nn. 75. 76. - (3) Op. c. l. 3, n. 628. - (4) L. 6, n. 322.

[1] *Op. theol.* I, tr. 2, n. 191.

[2] Ball.-Palm. I, tr. 2, n. 186.

— Probable judgment concerning the honesty of an action to be done. 1. In order that he may obtain for himself a probable judgment concerning the honesty of his action, an unlearned man who doubts or hesitates usually must be led by another's authority; and commonly he can also stand by the judgment of one man whom he rightly holds to be instructed. Thus those unskilled in theology can

acquiesce in the parish priest or confessor, unless they have a positive cause for suspecting their ignorance or rashness in certain matters; or unless they themselves, in certain arguments, for example in knowledge of law, are more versed.

2. Nor are they prohibited from approaching several upright confessors or doctors, if perhaps the first one questioned has answered too severely. But if they have obtained truly contrary responses from expert men, they will be able of themselves to estimate the matter as positively uncertain, so that they preserve free option.

3. Theologians themselves who are not so learned can trust the authority of a prudent writer who reports an opinion as extrinsically probable. Yet they will have to dissolve a positive suspicion of error according to the merit of the cause and according to the abundance which they have. Indeed, concerning an author of the gravest and most approved authority, such as St. Alphonsus, it has been answered that it is permitted for a priest confessor to follow his opinions simply, with no other selection made. This, as is clear, must be taken insofar as either a decree of the Holy See or a changed law has not clearly taken away the probability of the opinion. Cf. resp. S. Paenitentiariae, 5 July 1831. A.S.S. I, 497, or Bucceroni, *Enchiridion*, 4, p. 9.

3. Nor is a learned theologian obliged to examine all things by himself; but he himself can work according to an opinion which learned men defend as probable and safe. And it belongs to a prudent man not so to trust, at least in graver matters, his own judgment, that he neglects to confirm his own persuasion or opinion by consultation with or questioning of others.

— On a safe and a safer opinion. This must carefully be observed: an opinion is called safe and safer under a diverse respect. An opinion is called safe with respect to formal sin, which you can follow without fault; while it is called safer with respect to material sin. That opinion is safer which, whether it is more or less probable, nevertheless removes more every danger of material sin. Therefore it is the opinion for the law, for the obligation. Hence Titius can embrace the safe parts even when he follows the less safe opinion.

Article II: Various Opinions or Moral Systems

— The ineluctable necessity of a moral system. When, after a congruent investigation, the conclusion concerning the honesty of a future action or omission remains uncertain (we are solicitous in moral theology about this respect alone), by an ineluctable necessity the question is imposed upon us to be solved: by what certain practical judgment will our action be ruled? By a judgment, I say, practically certain, since a practically doubtful conscience cannot rule a human action, as we have seen, n. 346.

In vain would we try to decline that necessity. As vainly as if we wished to obtain for ourselves direct certainty concerning every matter.

Moreover practical certainty, which directly is lacking, will not be able to be obtained except indirectly, by appealing to some universal principle as the major of a syllogism, and by composing it with the speculatively doubtful judgment of conscience, and finally by collecting the syllogistic conclusion: Therefore I shall have to abstain from that action, or I can safely do it.

Let us suppose the principle of tutiorism, today to be deserted by all: The safer opinion must always be chosen. With this major let this minor proposition be joined: But the honesty of such an action is only probable, and therefore the opinion forbidding it is safer; this conclusion will follow: Therefore I must certainly abstain from this action.

In this way, where direct certainty was lacking, we obtain for ourselves reflex certainty, on account of which the very principles by which it is obtained are called reflex principles. But which principles are to be so called has come into controversy. And moral systems are called the diverse ways proposed in order that we may arrive from a speculatively doubtful judgment at a certain dictate concerning the honesty of an action. The name was perhaps given from this, that those opinions dominate the whole discipline of morals.

— Various moral systems. I. Rigorists, or antiprobabilists, or tutiorists, condemned every action unless its honesty was demonstrated to be at least most probable. Thus the milder ones opined, such as Fagnani and Habert, who wrote after Alexander VIII, on 7 Dec. 1690, among the propositions condemned and prohibited respectively as rash, scandalous, ill-sounding, injurious, proximate to heresy, savoring of heresy, erroneous, schismatic, and heretical, reproved this third proposition of the Baianists and Jansenists: "It is not permitted to follow a (probable) opinion, or among probable opinions the most probable" (Denz. n. 1293). Before, the stricter ones required an action certainly licit according to itself. The reason of the system was taken from the moral obligation, which they imagined, of avoiding every danger even of material transgression of the law. That system now has no Catholic defenders [1].

II. Probabiliorists contend that the safer opinion must be followed, unless the speculative liceity of the action is manifestly and solidly more probable. They too argue from the necessity of avoiding the danger of violation of law even when not conscious. Yet they temper this principle of rigorism by this other reason: that an opinion certainly more probable is morally certain, because contrary probabilities mutually destroy one another, so that only the excess remains as a positive motive for deciding. They also call upon this reason: that it is consonant with the law of our intellect that, when evidence is lacking, we embrace that which is more like the truth. Billuart [2] and the more recent school of the Friars Preachers defend probabiliorism; nevertheless several of our contemporaries of the same Order recede from it.

III. Equiprobabilists, who sometimes call themselves moderate probabilists, besides the use of a certainly more probable opinion, which they always concede, also allow, where the question is not about the cessation of a law or obligation but about its first existence or about the beginning of the obligation, the use of an equally probable opinion [3]. They themselves rely upon the mutual destruction of contrary probabilities; but, when the probabilities are morally equal so that no positive reason, according to them, remains, then they say that the principle of possession must be used, so that you answer for the law or for liberty according as the law or liberty possesses. But the law is in possession when there is question of the cessation of the law, and by no means when there is question of its beginning. They add also that it is consonant with natural equity that, with equal balance, sometimes answer be made for law, sometimes for liberty [1]. The Fathers of the Congregation of the Most Holy Redeemer, Simar, C. d'Annibale, and some Fathers of the Order of Preachers defend equiprobabilism.

IV. The system of compensation or of sufficient reason, whose origin is ascribed by C. d'Annibale [2] to Father Potton [3], O. Pr., does not permit the use of the principle, A doubtful law does not oblige, simply, but only then when a cause excusing from the obligation of the law is proportioned to the gravity and probability of the law: the more probable and the graver the law is, the greater cause is required in order that you may permit the danger of material transgression; that danger is an evil which can be permitted on account of a proportionate good effect, but not otherwise. Or otherwise: to a certain law corresponds a perfect obligation, but to an uncertain law an imperfect obligation, which is ended or terminated by the gravity of the motive for acting. Many in France adhere to this more recent system; R. P. Prummer, O. Pr., *Manuale Theologiae moralis*, I, nn. 351. 352, also favors it.

V. Pure or absolute probabilists affirm that an action is practically safe whose liceity, all things weighed, is demonstrated as solidly probable speculatively. By adversaries they are sometimes called broad, laxer, and more recently "minus-probabilists." Thus the Order of Friars Minor, thus formerly many Friars Preachers, thus now writers of the Society of Jesus.

There were those who, moved by excessive benignity or rashness, proposed opinions doubtfully, slenderly probable as practically safe. These have the name of laxists.

Yet no one professes laxism; but the Holy See, by proscribing these two propositions, proved herself alien from sayings which provide an occasion of laxity. They are: prop. 27, condemned (at minimum as scandalous) by Alexander VII, 24 Sept. 1665: "If the book is of some younger and modern author, the opinion must be judged probable, so long as it is not established that it has been rejected by the Apostolic See as improbable" (Denz. n. 1127); prop. 3, by Innocent XI, 2 March 1679: "Generally, while relying on probability whether intrinsic or extrinsic, however slight, provided one does not go beyond the limits of probability, we always act prudently" (Denz. n. 1153).

Today most writers or professors in Belgium, France, Spain, and Italy teach simple probabilism, which Harnack in his *Dogmengeschichte* [1] attacks sharply but ineptly: ineptly, I say, because the learned man did not even grasp the signification of the words in this matter.

The Friars Preachers have not formally deserted probabiliorism. But since, after the solemn approvals of the Holy See given to St. Alphonsus, that cause can be called desperate, they began to favor the equiprobabilists sufficiently, as is clear from the essays which appeared in the *Revue Thomiste*. Indeed, in his work *La phil. morale de S. Thomas*, R. P. Sertillanges simply rejects probabiliorism, and in c. XVI concludes in these words: "Equiprobabilism well understood can therefore pass by good right for a Thomistic solution."

We shall not discuss the very mind of St. Alphonsus. Several writers of the Congregation of the Most Holy Redeemer, v.g., Aertnys, though not all, admit that he, after he had used probabiliorist teachers, through part of his life gave his vote to pure probabilism; and indeed, at the very mature age of 53 and 59 years (1749 and 1755), he wrote two dissertations in which he very openly and with many arguments defended simple probabilism. Then there were those difficulties of the times which seemed to advise verbal changes of the system, less clear formulas; but the Holy Doctor himself was of such humility that by the very attacks he could have been led to temper or soften his opinion.

Wherefore C. d'Annibale, I, n. 263, note 10, seems to us to have better followed the mind of the Holy Doctor, where he writes that moderate probabilism, such as Suarez, Lessius, Laymann, Bonacina... de Lugo defended, whose doctrine for the Holy Doctor (§ 4, n. II) "how great it is, is perfect from every

side," was never attacked by St. Alphonsus. "And the things which afterward he wrote and discussed for defending equiprobabilism, from the years 1748 and 1755 (V. § 11) up to the end of his life, those were written chiefly to defend moderate probabilism against broad probabilism"; - and likewise R. P. Aertnys, C.SS.R., *De Conscientia*, n. 94: "In his first dissertations St. Alphonsus strenuously defended against the Probabiliorists the thesis of Probabilism, 'It is permitted to follow a probable opinion for liberty, the more probable for law having been left aside.' From this opinion the Holy Doctor never receded; but, to avert from probabilism the danger of laxity, afterward he judged that this moderation should be added as part of his system: 'It is not permitted to follow the benign opinion, when the opinion for law is certainly and notably more probable,' because an opinion of this sort is already, as we have declared, morally certain, and the other is not truly and solidly probable but only doubtful or slight... That the distinction between an opinion a little more probable and much more probable must be ascribed to that motive which we brought forward above, St. Alphonsus clearly sets forth in his *Apologia* of the year 1765 in these words: 'I have never contended nor do I now contend to establish new systems; I know well that no Probabilist of solid doctrine holds as licit the use of an opinion slenderly or doubtfully probable. But because many Probabilists indiscriminately say that it is permitted to follow the less probable opinion when it has some foundation from reason or from authority, therefore I wished to distinguish, saying that it is illicit to follow the less safe opinion when there is much and certain preponderance on the side of the safer opinion; ... because then the less safe opinion cannot be called certainly probable' [1]. Therefore he distinguished with this counsel, that he might define the limits of certain probability and of moral certainty, and in that way preclude the use of opinions which are not true and solidly probable... From all these things I infer that Probabilism thus moderated, rather than accepted in the laxer sense, must be called common." Cf. more in d'Ales, *Dictionnaire d'Apologetique*, word *Probabilisme*, where a historical inquiry will be found, written by Fr. de Blic, S.J.

Finally this must be observed: approved writers of various schools today disagree less materially than formally. Thus C. d'Annibale proclaims safe in conscience the use of pure probabilism. Thus, from the Congregation of the Most Holy Redeemer, Aertnys (l.c. n. 94. 95) professes that practically he thinks with several writers of the Society; but Marc, of the same Congregation, declares himself by no means hostile to the moderate probabilists of the Society (he calls such Suarez, Vasquez, Lessius, Laymann, Lugo) [1]. And R. P. Sertillanges, of the Friars Preachers, while he recently wrote these things: "Supported by this, that action cannot attain evidence; that prudence is preserved at a lesser price; that the criterion of the obscure is the probable; and that Providence, having cast us into the probable, must be content with it on our part, arguing thus, explicitly or implicitly, the mind finds it good to adhere to the opinion called prudent; the will follows, and finally determines adhesion" (2); while, I say, he was writing these things, what was he doing except repeating that celebrated saying of the probabilists, "He who acts probably acts prudently"? But they added that it suffices for honesty that we act prudently.

On their own part, however, the Wirceburgenses were already writing, *De actibus humanis*, n. 240: "Scarcely any prudent theologian will affirm his opinion to be manifestly and notably more probable, as long as he recognizes the opposite as truly and theologically probable; but if it ceases to be such, the question also ceases." Hence, although theoretically, or in the abstract, it is true that the solid probability of one part is not excluded by the greater probability, even in a notable degree, of the

opposite part, nevertheless, psychologically, perhaps these two things will not be affirmed at the same time.

Wherefore we think that today, among approved theologians, scarcely anyone is found who would oppose this formula of conclusion: Whenever the question is immediately about the liceity of our action alone, he acts safely who embraces a solidly probable opinion. If in this way we practically agree, then also more easily, according to sound principles of philosophy, the concord of theologians, which Jansenism destroyed, now that this plague has been routed, will be restored.

[1] He finds a non-Catholic one in Habsack; cf. below here. Some in France and Germany (v.g., those who taught at the University of Tubingen), having repudiated any moral system, proposed to solve all cases by direct reason. These then either must be rigorists, or, for one moral system, invent as many systems as there are diverse ways by which they think they can arrive at certain moral conclusions.

[2] Dissertation VI, *De actibus humanis*.

[3] I probably recited the breviary, probably not: since I was certainly obliged, I am still bound by recitation. Midnight has probably passed; probably not. If between Thursday and Friday, I can eat meat, because the doubt is about the beginning of the obligation; I cannot, if the doubt arises between Friday and Saturday, since the matter is about the cessation of the obligation. One doubting concerning his age of 21 years is not bound to fast; one doubting concerning the age of 60 years is bound.

[1] Thus d'Annib. I, 201. - (2) Cf. d'Annib. I, 263, note 1.

[3] *De Theoria Probabilitatis*, Paris, 1874.

[1] Tom. III, 1910, pp. 748-756.

[1] *Vindiciae Alphonsianae*, I, 60.

[1] *Institutiones morales* I, 864.

[2] *La philosophie morale de S. Thomas*, c. 16, III, p. 549.

§ 3. The True Moral System Is Established

— We shall proceed in this way: after the other systems have been briefly excluded, we shall show that the system of pure but moderate probabilism is true.

I. Neither Tutiorism, which no Catholic now admits, nor Probabiliorism, nor Equiprobabilism, nor the system called from compensation can be admitted speculatively or theoretically.

We say speculatively or theoretically; because, if by these various names they merely contend to obtain that, in the moral discipline of Catholics, that moderate probabilism alone should flourish which Suarez, Lugo, and other outstanding doctors of the sixteenth and seventeenth centuries cultivated, then the things said concerning the practical concord of most Catholic writers of our age return. Therefore:

1. Tutiorism labors under this fundamental defect: since it does not distinguish between facts of the physical order and facts of the moral and juridical order, it wholly passes over this, that it can happen that because of the doubt itself the condition necessary for the law to exist or to be applied to the subject ceases. But then there remains no danger of violation of law whence the Tutiorists were taking their argument, while the danger of a physical fact is by no means removed by my doubt concerning the event. Cf. the positive demonstration of probabilism.

2. Probabiliorism needs this principle: probable reasons which incline toward contradictory parts mutually destroy one another, so that, if they are equal, no probability remains; if they are unequal, the excess of the greater probability remains as the only motive for assenting, so that only one prudent conclusion remains: that which is founded upon that excess [1].

But it is so far from being the case that that mutual destruction is necessary, that you will scarcely find a case where it is demonstrated to occur [2]. The reason is that most often motives are drawn from diverse sources. Since they are disparate, they can very well stand together. Thus, v.g., is there, from natural law, an obligation of restoring to the poor what, having been unjustly acquired, you cannot return to the owner? Those who deny argue from this, that natural law commands this one thing, that the owner unjustly harmed be restored from the damages; those who affirm contend that that unjust possession cannot be sanctioned by natural law. Does he sin who omits a more perfect action to which he is clearly invited? Those who deny rely upon the distinction between works of counsel and precepts; those who affirm call upon man's charity toward himself and the necessity of acting reasonably. How, they say, can the choice of the less good part be reasonable? But who does not see that to both reasons their own proper force is preserved, and that motives of this sort can by no means be compared with weights placed in the two pans of one balance? Indeed, if five witnesses, otherwise approved, do not agree concerning some matter, but two narrate the fact in one way and three in another way, it will indeed be doubted in what way the matter truly happened, but a positive reason for each narration will remain.

But when the distinguished Marc, *Institutiones*, I, n. 74, conceding that it rarely happens that the motives themselves destroy one another, nevertheless contends that their force is relatively and practically destroyed, insofar as, because of the equality of the motives, the intellect can now be moved to assent by neither, so that, moved by the will alone, it adheres to one part, he offends against sound philosophy. For this teaches us that it is repugnant to the nature of the intellect to adhere to some part by the will alone, without any reason; then, that the intellect by itself is not determined to assent except by the evidence of the thing, so that even if there is only one probable motive, it needs the command of the will in order to arrive at opining. Finally, as will soon appear better, it is not even necessary, for the right use of probabilism, that the intellect adhere to either part as true.

But if, besides, the probabiliorists contend that this is the law of our reason, that, when evidence is lacking, we adhere to the part more like the truth, this cannot be admitted, at least universally, either speculatively or practically. Not speculatively: for it is enough for the intellect to testify to that which it truly sees, i.e., that the matter is doubtful but more like the truth; indeed of itself it does not receive except what it sees. Not practically. Even in the external forum a defendant is absolved who is more likely to be culpable. In a civil judgment, if discretion is left to the judge, in the sentence he will have regard to the probability of the opposite side, at least in computing expenses. Only then, when there is a necessity of awarding the whole matter to one or the other litigant, will the judge pronounce right according to the things more like the truth. But in our private action, sometimes we shall prudently have to abstain from an action whose happy outcome is much more like the truth; it also happens, if from the less probable part a far greater profit is hoped, that a merchant prudently tries his fortune by this less safe way. Therefore we are never moved by what is like the truth as by

what is certain, far less can it be said that, when certainty is lacking, likeness to truth is perpetually present to us as guide.

Why therefore, in the internal forum, where, when certainty is lacking, the very condition of obligation can be lacking, do you impose the rule of following parts certainly more like the truth, a rule which cannot even be called constant in the external forum and in exterior matters?

Add that, in this distinction of degrees, much must be attributed to subjective inclination, so that what one will call more probable another will hold as equally or less probable. And, as R. P. Prummer, O. Pr., says, *Manuale Theol. mor.* I, n. 346, probabiliorism is almost impossible in practice. For the common opinion holds that a penitent must be absolved who, having left aside the more probable opinion, wishes to follow the probable opinion, so that a probabiliorist confessor is sometimes compelled to act against his own system. "Whence today perhaps I think there is no confessor who applies all the logical consequences of Probabiliorism in the practice of the tribunal of penance" (Prummer, l.c.).

3. Equiprobabilism, in the part in which it agrees with that system, sins by the common error of Probabiliorism. Besides, it employs that fictitious possession of law or liberty which we demonstrated in the introduction itself to pertain least of all to the matter. R. P. Prummer, op. c. I, n. 348, can say thus *ad hominem*: "If the law is strictly doubtful, that is, if equally grave reasons urge its obligation or deobligation, liberty always possesses, which by nature and reason seems to precede law. Whence, in that case, to distinguish between the cessation of law and the existence of law is superfluous. For in strict doubt one must stand for that for which the presumption stands. But the presumption stands for liberty until the obligation of the law has at least been made probable."
4. As to the system of compensations: 1. Since the conscious violation of an obliging law is a sin not only material but truly formal, while the "compensators" merely object to the probabilists the permission of material sin, they freely admit that no obligation arises from the merely probable law itself, but tacitly appeal to a higher law which would forbid the permission of material sin made without proportionate cause: which law remains to be demonstrated by them. 2. Nor must material sin always be apprehended. For since an objectively obscure law has not been promulgated, often the very foundation of material sin will be lacking: a law which is unconsciously violated. 3. Even when material sin can be present, either the matter concerns positive law, and then, scandal being excluded, its non-culpable violation is harmful to no one; or the matter concerns natural law, and then a grave reason of answering in favor of the least obligation will always be present as excusing. For questions of this sort are not raised except when some serious utility of the present order, at least temporal, renders the observance of the doubtful law difficult. 4. Nor ever, if we speak strictly, is material sin properly permitted. For that effect is properly permitted which is foreseen as going to follow. Here it is not foreseen except perhaps as going to follow. Therefore rather the danger of material sin is permitted. How will they ever demonstrate that permission of this sort is forbidden under grave sin without proportionate cause, if of itself there is only a light obligation of warning him who materially but certainly violates natural law? 5. Finally, the system does not have universal use. For what if the proportionate cause itself is present only probably?

Concerning that system d'Annibale, I, n. 263, note 1, has these words: "The foundation (entirely new) upon which this whole edifice has been built surely totters."

But, as Bouquillon observes [1], this can be true in fact, that we give place to some compensation. Since broad moral certainty, which is required and suffices for acting prudently, is sufficiently undefined, and sometimes scarcely exists in the lowest degree, the consideration of the importance of the law will be able to avail for affirming practically an obligation which is scarcely morally certain; and, on the contrary, the consideration of the difficulty, whether extrinsic or even intrinsic, will be able to avail for denying practically an obligation which is almost morally certain." And also, as we shall see, the dissolution of a particular law by no means absolves a man from the common duty of observing the general rules of honest action, whether they regard the object, or the motive, or the mode of honesty.

[1] Cf. Billuart, diss. 6, and Sertillanges himself, *La philosophie morale de S. Thomas d'Aquin*, pp. 552. 553.

[2] Cf. Ballerini-Palmieri, *Op. Theol.*, T. I, Tr. 2, n. 188.

[1] *Theol. mor. fundament*. n. 297.

— II. The true moral system is established. 1. In order to forestall the fallacies of arguments, these things must be well noticed:

a) The distinction between a manifest thing and a thing like the truth. When a certain thing is manifest, it can equally be said: the thing is seen, its evidence is perceived; but when a thing is only like the truth, the likeness to truth indeed, but by no means the thing itself, is known. Wherefore it cannot at all be said: he approaches nearer to the thing who seeks it where it is more like the truth that it will be found, since, on the contrary, it can happen that he is farther from that place than from the place where the seeker now stands;

b) We free man from no divine service. Him whom we free from some definite obligation we least of all make immune from the general divine service by which man, in every action of his, is commanded to procure the glory of God. For man is capable of constituting a certain order in things both his own and another's by his rational appetite [2]. And while thus, as a subordinate orderer, he disposes certain things fitly, he praises the divine Majesty, whose perfections he manifests and to whom he can also refer the free actions of his own. Therefore he serves God even who does what he is commanded to do by no divine precept. For the rest, in the end or mode of any action, some precept to be observed necessarily occurs;

c) Perfect concord between intellect and will is impossible. Concord between intellect and will must indeed be procured. But while direct conscience can affirm an obligation, deny it, or doubt concerning it, the will can only do or omit, nor can it have an act perfectly congruent with doubt. Hence, if, as often as conscience reports an uncertain obligation, you pronounce the will bound so often, you will seem to demand too much; but too little, if so often you absolve it from every bond. This discrepancy of intellect and appetite at length gives place to the question concerning a moral system [1]: that knot of it must be untied;

d) How one arrives at opinion. The intellect is compelled by the evidence of the thing alone. Wherefore opinative assent is always determined by the will [2]. But the will is moved by reason of good [3]. Therefore, if no other good than truth offers itself as to be sought, man will incline toward

the parts more like the truth. But there are other goods, other utilities also of the human order, on account of which we prudently determine that something else is to be done than the parts which are more like the truth would urge. Consider that practical distinction.

If certain ruin, certain shipwreck, certain invasion of robbers is foreseen, no prudent man would commit money to business or to a ship, or, unarmed, make a journey through ways which robbers hold occupied. But if these things are not morally established, for the sake of great utility, for the sake of attaining a great good, fortune will prudently be tried, although the hope of success is less than the hope of disaster or misfortune. The mind of the agent will turn itself to considering the contrary probability. Certainly he will not say to himself: I judge that it will happen that the ship perish, that robbers oppress me; but rather he will reason in this other way: there is a serious probability of escaping shipwreck or the hands of robbers, and the danger is redeemed by the utility;

e) No force is brought upon the intellect. He who embraces the less probable parts ought not to bring any force upon himself so that he falsely estimates them more like the truth; but it is enough that he judge them practically safe because probable.

[2] "Man," as Leo XIII writes most wisely, enc. *Rerum novarum*, 15 May 1891, "... under the eternal law, under the power of God governing all things most providently, governs himself by the providence of his counsel."

[1] We borrow this observation, which we think pertains to the hinge of the matter, from a certain professor of dogmatic theology.

[2] Cf. 2, 2, q. 1, art. 4, c.; q. 2, art. 9, c. and ad 2.

[3] Therefore to the element which the will adds it must be attributed that contradictory opinions exist. And thus it happens that probabilities do not mutually exclude one another, as the contradictory opinions themselves do. And because no opinion necessarily infers the falsity of the opposite opinion, it also happens that no properly contradictory opinions are given, although opinions of contradictories are given. Cf. R. P. Munzi, *Logica*, n. 294.

— 2. These things having been premised, let this be the simple demonstration of probabilism. Every divine precept either is certainly established or is uncertain. We are bound by a certain precept, even if it is such only morally: this is undoubted. Are we also bound by an uncertain one?

If we are bound, the various degrees of doubting are distinguished in vain; but until it is morally established that a precept is absent, the parts of the precept, or the safer parts, must be embraced by us. But if we are not bound by an uncertain precept, again, every other distinction being omitted, we shall preserve free option until it is morally established that a precept is truly had.

But the reason for doubting concerning the honesty of free option is drawn from the danger alone of violating, if you act otherwise than the probable precept shall have indicated, either the divine precept which perhaps exists, or the moral order which is sanctioned by divine precepts.

But if you consider the matter more closely, no violation of precept is to be feared. For a divine precept means a will divinely intimated to a subject man and therefore of itself known. But an uncertain precept of itself is unknown. For only by efficacious proof is the thing itself, which is called true, known; but he who has learned a thing as like the truth knows not the thing itself, but merely its appearance, sometimes fallacious. Wherefore an uncertain precept must be held as none.

But, the divine precept being excluded, we ought not to be solicitous about the danger of acting against the moral order. For by the same limits by which the divine precept is contained, by the same limits the care of avoiding its material transgression is contained [1]. Whence will you demonstrate

that a general law which demands more has been promulgated? Besides, we can positively add this: right order demands that, when a precept ceases, man preserve free options, by which he may make actions at least formally good. Therefore material transgression is permitted by God on account of the goodness of that human liberty [2]. Finally, if greater care were necessary for us, not even when an action seems certainly honest to us would we be permitted to put away anxious solicitude: for to err is human. Much less would that be permitted when the opinion of honesty is only more probable or most probable; for then positive apprehensions of material violation remain.

Hence it is also clear what must be answered to one objecting that, in the proposed case, not less than the obligation, the very permission of acting is at least directly unknown. We readily admit it. But permission of acting ought not to be demonstrated, on account of the commonly admitted principle: whatever is not prohibited is permitted. For the physical faculty of choosing, the various solicitations by which we are impelled to acting, the goodness which of itself is present in action as such [3], the very formal object (good) under which we seek all things, prove moral liberty of acting, unless there stand in the way a divine prohibition known by human reason.

Wherefore those also are mistaken who, like C. d'Annibale, think that favor must be shown equally to law and liberty, and therefore defend equiprobabilism. For if the law exists, it always prevails over the liberty which it takes away; but if it is doubtful, common sense with every law says, not that sometimes answer must be made for law and sometimes for liberty, but simply: in doubt one must answer for liberty, or: a doubtful law does not oblige [4].

Finally, cause yourself to advert that the order which man constitutes by his free election can be better or more sublime in itself than that whose observance would undeservedly be imposed upon him from a more severe system. For an election contrary to a probable or more probable obligation can be directed by our will to the best ends of charity, of the salvation of neighbor.

Thus far the simple exposition of the matter and yet an adequate consideration. For in reality speculative judgments concerning the honesty of an action belong to two kinds, not to more: they are either certain or uncertain.

3. But what if you wish to discern the various degrees? - Yet to those who wish to observe the various degrees by which a thing not demonstrated, if it is compared with the opposite, can be more or less or even equally like the truth, an answer can be made thus.

Certainly, at first sight, this kind of reasoning offers itself. A man studious of truth, to whom full arguments are lacking, will opine according to the things more like the truth. But if contrary arguments seem to be of almost equal weight, then he will remain doubtful, wavering, and as it were suspended in mind between each part.

But, as we have already noted, the pursuit of truth is not the only good by which we are moved to acting. And in every use of life, practical judgments indeed are directed according to properly so-called speculative persuasions; but when there is question of uncertain conclusions, often, on account of a just cause, one prudently recedes from the parts which are more like the truth. We saw examples above, nn. 358, 3; 359 d.

But in a moral matter these questions at once arise in the mind: prudent fear of error is not excluded by an opinion; therefore the obligation is uncertain, and also the honesty which are predicated as

more like the truth are uncertain. Why therefore must I act in the same way whether the obligation was certain or uncertain; why will I be permitted to act in the same way whether the honesty is certain or uncertain? For only then, when the affirmation or negation of obligation is certain, does the action truly agree with the mind; but when the affirmation or negation of obligation is uncertain, the obligation seems to be imposed too severely, or relaxed too benignly.

If the state of the mind opining alone is considered, these questions cannot be satisfied; a certain argument is desired, by which it may be effected that a speculative opinion suffices so that we must or can act according to it. And thus the principles called reflex above are recalled: that no one is held by a non-promulgated law; that no one is bound by a precept of which he does not have knowledge. But the diverse principles concerning the destruction of probabilities or concerning possession have already been exploded. Moreover the former principles permit no distinction between various degrees of probability [1]. Therefore one must return to the simple and logical division by which a certain speculative judgment is separated from an uncertain one.

4. We can also use this brief reasoning. An action which practically is prohibited by no law is certainly honest and therefore practically safe. But an action whose liceity is speculatively probable is prohibited by no law. Therefore it is certainly honest and practically safe.

The major is proved. As we said above: since our liberty does not remove order, since to act is good of itself, since we seek all things under the species of good, since we are freely borne to seeking our own good, it must be held with common sense: those things are permitted which are not prohibited.

The minor is proved. An action is not forbidden by a particular law to which the action is only probably conformed: for knowledge of this law, or imputable ignorance of it, is not had; but the law itself cannot reach us except by means of certain cognition of it.

Nor is it forbidden by a general law by which whatever is only probably not against a particular law would be prohibited. For that general law is not demonstrated, and therefore has not been promulgated. R. D. De Bock reasons similarly, *Tract. fundam. theol. mor.* 2, n. 223.

The thesis is confirmed, a) by considering human nature and its fragility. It seems little human that fragile man should morally have to fulfill also uncertain obligations, or obligations probably null. Wherefore, concerning human law, already ancient wisdom pronounced that rights are more prompt to loosen than to bind, and that in doubts one must answer for liberty. Cf. St. Alph., diss. 1765, c. 4, n. 35.

It is also confirmed, b) by the logical necessity of choosing for probabilism or for tutiorism, which is repudiated by all. For either the principle stands: A law which after diligent investigation appears truly doubtful does not oblige; or the principle, A doubtful law does not oblige, is rejected. If it is true, it demonstrates probabilism. If it is rejected, logically neither probabiliorism nor equiprobabilism can be admitted. For both systems permit that answer be made for liberty to which a less probable law, therefore a simply doubtful law, is opposed. Nor let them say: liberty is morally certain when a less probable law is opposed to it. For this is affirmed gratuitously, unless you recur to the principle: A doubtful law does not oblige. R. P. Prummer, *Manuale*, I, n. 346, 1, almost concedes that this is a logical conclusion.

N.B. C. d'Annibale demonstrates by many examples the principle: A doubtful law does not oblige, I, § 162, note 21. But he well sets forth, § 261, that liberty precedes law. "The contrary opinion," he says, "is most alien from the nature of law... we understand that to be licit which the law does not forbid, that to be illicit which the law prohibits."

[1] He who would deny this must impute to God a moral order not sufficiently sanctioned.

[2] This is the direct refutation of tutiorism and of the system of compensations.

[3] Cf. Sertillanges, op. c., p. 43, n. 1; p. 45, n. 4.

[4] "In obscure matters, the minimum is to be followed." R.I. 30 in 6°. Cf. d'Annibale, *Summula*, I, 162.

[1] In order that we could distinguish various degrees, it would be necessary to have reflex principles by which they are distinguished; but we have only two, which do not bear that further distinction.

— Scholia. I. What St. Thomas thought. In the age of St. Thomas, those questions concerning probabilism were not being posed. Wherefore we do not wish to call upon him as a formal patron of our opinion. It has sufficiently profited us, since he formally taught our reflex principles.

For he has these things: "Promulgation itself is necessary for this, that a law have its force" [1]. "No one is bound by any precept except by means of knowledge of that precept. And therefore he who is not capable of knowledge is not bound by a precept, nor is anyone ignorant of the precept of God bound to doing the precept, except insofar as he is bound to know the precept. But if he is not bound to know and does not know, in no way is he bound by the precept" (2). "When I say conscience, I do not say or imply knowledge only strictly accepted, insofar as it is only of truths, but knowledge accepted in a broad way, for any knowledge whatsoever, according as whatever we know, by common use of speaking, we are said to know" (3). "That is called licit which is prohibited by no law" (4).

[1] *Summa* 1, 2, q. 90, art. 4. - (2) *De veritate*, q. 17, art. 3. - (3) Ibid. art. 2 ad 2. - (4) In 1. 4, d. 15, q. 2, art. 4, solution 2.

— II. On the uniquely probable opinion. An opinion can also be uniquely probable, which is impugned by no grave reason, and yet is not truly demonstrated. It is not permitted to follow the less safe parts against that opinion; for their election would not be prudent or rational. Wherefore an opinion of this sort is practically assimilated to what is morally certain. Cf. Noldin, *Principia* n. 224, 5. But, as we said in handing down the notions, moral certainty is here taken broadly.

— III. An opinion probably probable. Here it is customary to ask whether, from an opinion probably probable, a practically certain judgment concerning the honesty of an action can be gathered.

With Ballerini-Palmieri [1] and Noldin (2), we judge that the answer depends upon the signification of the words. If, with that moral certainty broadly so called, concerning which n. 351, or because of a grave reason impugned by no contrary grave reason, you affirm that an opinion is probable, certainly the same must be estimated by you as truly probable.

But if the probability itself comes into serious controversy, and you discern serious motives on each side, the probability itself seems to us uncertain, just as a law is uncertain which is affirmed and denied by serious motives. But uncertain probability is probability not seen, which therefore is only doubtful and does not suffice.

[1] *Opus Theol.*, I, tr. 2, n. 190. - (2) *Princip.* n. 235, 2.

— IV. The force of presumptions. Presumption, taken from the customary way of acting, in not a few cases produces sufficient probability why, unless a grave reason positively stands in the way, you may solve the case according to that presumption. This rule is founded in human necessity, lest we be compelled to live a life full of anxieties, and is contained in various sayings: "From things commonly occurring, a prudent presumption is made." "In doubt one must stand for the validity of the act."

Wherefore he who is accustomed to be diligent in accusing sins, - in fulfilling penance, - in reciting the office, - in repelling temptations, can disregard a doubt concerning a sin accused, etc.

Likewise disregard negative doubts whether you had contrition in confession, whether you gave absolution, indeed whether you baptized well. Let the Ritual itself be heard, concerning consecration: "If the celebrant does not remember that he said the things which are commonly said in the consecration, he ought not therefore to be disturbed... But if he very probably doubts that he omitted something essential, let him repeat the form, at least under condition. But if they are not of the necessity of the Sacrament, let him not resume, but proceed further."

By a similar reason, a mandate given to you by a Superior is presumed legitimate; the wine which is offered to you in church for sacrificing, pure; an altar-stone, portable, well placed, so that, unless a special cause persuades otherwise, you can abstain from positive investigation.

§ 4. On the Use of Probabilism

— The proper place of probabilism. I. Probabilism has its proper seat where there is question of the liceity of the action alone, with consideration given to the law by which the action can be commanded, forbidden, or permitted. Then, according to the very order most wisely pre-established by God, the principles must be applied: a doubtful law does not oblige; no one is bound except through knowledge of the law [1]; and therefore, he who acts probably acts prudently, because he exposes himself to no danger of offending against an obliging law. Wherefore even then the use of probabilism is always licit or legitimate: it is confined by no exception.

But when there is question of probability of fact, no doubt of men can remove the danger of fact, as the danger of violating law is eliminated by a doubt of law. By what norms doubts of fact are ruled will soon be said below.

Therefore the exceptions sometimes brought against probabilism are only apparent, arisen from this, that probabilism is appealed to outside its proper seat.

[1] Cf. d'Annibale, I, 162.

— What is better to do. The use of the safer opinion is not always morally more perfect. It is more perfect of itself where, in order to do what is safer, one's own utility or convenience alone would have to be abandoned, but not where the less safe part is chosen for other reasons. If the obligation of restoring a sum to a man who will abuse it is uncertain, and you wish to give the same sum to an apostolic work, what prudent arbiter will estimate restitution as morally more perfect?

Indeed the use of the less probable opinion can be commanded. For obedience must be given to a Superior commanding according to a probable opinion, even if another opinion is more probable to the subject. Thus a Superior prohibits the fast by which you think yourself more probably bound: you are forbidden to fast.

— 1. Use of an extrinsically probable opinion. An extrinsically probable opinion cannot be useful to him for whom its falsity has been looked through. For presumption yields to truth. Nor does extrinsic authority have force except insofar as it founds a presumption of valid reasons. Therefore he himself is forbidden to use such an opinion. But it will scarcely happen to a prudent and not pertinacious man that he certainly judges false an opinion which commonly is held as probable.

2. Thus we say: and this concerning obligations of natural or divine law. But when there is question of human laws, it is reasonably judged that the legislator does not urge his law beyond what approved authors understand it to mean.

Wherefore, if I judge as wholly false some benign interpretation of a canon, which is sufficiently received, I myself am not prohibited from acting according to it. Thus, if we consider principles, an excuse from reservation sought from ignorance seems altogether vain. Yet in places where the bishop has not removed the controversy by formal decree, any penitent or confessor will be able to allege that excuse and admit it. For the very well-known controversy permits us to interpret the silence of the Code thus far as a toleration of the more benign opinion.

3. A confessor or another learned man can respond to one consulting him according to the probable opinion of others, with his own opinion omitted, even if this latter was more probable. Indeed he can indicate to him an opinion which other learned men defend as probable, although he himself judges it false. And a penitent who wishes to follow such an opinion has a right to absolution [1]. And even if the opinion to which the penitent adheres is only apparently probable, provided the penitent is in good faith, he will be able to be absolved: for he is disposed.

[1] This obligation of the confessor confirms probabilism. Cf. De Bock, *Theol. fund.* n. 231.

§ 5. On the Probability of Fact

— The principle of the safer part. Since the danger of fact is diminished by no probability of opinion, it is said that in morals to act and to expose oneself to the danger of doing are equivalent. Therefore no immediate application of probabilism can be made to probable judgments concerning various facts. Therefore:

1. From an action which will probably be harmful to one's neighbor, one must abstain almost as from one certainly harmful, unless you can bring forward excuses of avoiding proportionately grave harm (one's own or another's). Yet in that estimation the distinction of certain danger and probable danger can be observed.

Nor can the probable honesty of an action be confused with the merely probable existence of a condition required for that honesty. This probable existence leaves the action practically doubtful, and therefore certainly dishonest. Thus a hunter is forbidden to intend the killing of a wild animal with danger to human life; nor can we throw a thing through a window with danger, even merely probable, of harming a passerby.

2. The necessity of attaining eternal salvation demands that, if the supply is had, means be chosen only which will certainly suffice (with moral certainty strictly accepted). He who is content with probable means would gravely derogate from charity toward himself. Hence no one can be content with a baptism which is only probable.

They are accustomed in this place also to allege prop. 4, reproved by Innocent XI: "An unbeliever not believing, led by a less probable opinion, is excused from unbelief." But the condemnation is not to be understood as if one ought to elicit an act of faith who perceives the Catholic religion only as more probable. For this is impossible, since the assent of faith ought to be certain above all things. But this is the sense. While by successive graces the unbeliever is drawn to faith, he cannot resist the inviting grace of God and cease from inquiry by alleging the probability which he then attributes to his unbelief; much less will he be able to do this if the superstition in which he was born now appears to him less like the truth. Or, to use another way of speaking, never, in no order of things, would this opinion have been probable: "It is permitted to adhere to a religion which is known to be less probable." But now it cannot happen that, for one believing, the credibility of religion is only probable.

3. The reverence owed to the sacrament, and often also an obligation of justice and charity, demand that we procure the certain validity of a sacrament by moral diligence. This moral diligence must be weighed from the necessity, dignity, rarity of the sacrament, and from the ease or difficulty of obtaining certainty. Thus the disposition of a penitent, the genuineness of wine for Mass, the truth of water for baptism, ought to be established in unequal measure. Besides, that principle is tempered by this other one: the sacraments were instituted for men. Wherefore, as often as the good of the faithful seems to have to be preferred to care for a valid sacrament, it is altogether permitted to abandon this care in order that you may procure that good. Therefore, in order wholly to avoid the danger of idolatry, it will never be lawful consciously to put forward doubtful matter for confecting the Eucharist, especially since the Eucharist does not have necessity of means; but often it will be necessary to confer a doubtful baptism, a doubtful absolution, upon one dying.
4. All physicians or surgeons who employ only probable medicines when certain ones are at hand are lacking to the debt of justice. And they will sin more gravely if uncertain medicines can at the same time be harmful. Nor, with strict harm to his own body, can a sick man renounce his right. Wherefore not even with the sick man's consent will it be permitted to try medicines for the sake of experiment, if either life or health would be much endangered thereby.

— Exceptions which permit the use of probability of fact. Nevertheless probability of fact can suffice for the honesty of an action:

1. Where the Church can and wills to supply by her authority a condition required of itself for validity. Thus, "in positive and probable doubt, whether of law or of fact, the Church supplies jurisdiction for both the external and the internal forum" (c. 209).
2. With a legitimate dispensation acceding, which renders the honesty certain. Thus, even when there is question of invalidating and inhabilitating laws, "in doubt of fact, the Ordinary can

dispense in them, provided there is question of laws in which the Roman Pontiff is accustomed to dispense" (c. 15).

3. When no certain reason obliges one to forestall the danger of error, even material error: as the danger of involuntary emission of seed.
4. When, on account of various opinions concerning liceity in such and such a case, the probability of fact can be converted into probability of law.

Thus, not only when you have done a work by which a vow is probably fulfilled; when you have recited the canonical hours in such a mode or time that you have probably satisfied the law; but also if it is probable, though not certain, that the vow has in fact been fulfilled, that the breviary has been recited, a probable opinion judges that you are relieved of the burden, because the obligation does not remain except as uncertain, and it would be little human to oblige you to repeat what you have probably already performed. Therefore, because of this probable opinion, and not as if an immediate use of probabilism then offers itself, practically you will have to do nothing further.

What if there was an obligation of justice? Does he who probably paid what he owed from justice now owe nothing, or will he at least, in proportion to the doubt, have to supply what perhaps he did not pay? Although this is approved by some sense of honesty and therefore is to be urged, and appears to us speculatively truer, nevertheless the matter is disputed; and, because of the disagreement of doctors, a debtor who refuses to supply anything will be able to estimate himself safe.

And observe that practically it does not matter whether the action whence the doubt draws its origin is culpable or not. Certainly it is not permitted to use a less secure way for sending owed money to a creditor. Yet if you have done so badly, as long as it is probable that the money thus sent has arrived, the debtor will be held by no practical obligation.

— On the simultaneous use of opposite probabilities. It is customary to ask whether it is permitted or not to use contrary probabilities. And the following cases are proposed:

a) Two testaments affected by the same defect of form, so that both are probably valid, probably null. Is it permitted to Titius, on account of his own utility, to hold one as valid, the other as null?

b) A testament is formless. Can the legatee accept the legacy because the testament is probably valid, but not fulfill the burdens which are imposed upon the legatee, because the testament is probably null?

c) Two foods are set out on a day on which one or the other is certainly prohibited, but which one it is can no longer be distinguished. Is it permitted to Titius to take both [1], or either one?

d) On a fast day, Titius, using the opinion which denies that the hour of dinner pertains to the substance of the fast, takes a full refection in the morning. Can he take another full one in the evening, because according to the more severe opinion, by the morning dinner the fast of that day has been substantially broken, so that the observance of the fast on that day has been made impossible?

e) On the night on which a feast day follows a day of abstinence (v.g., on the night between the vigil of Pentecost and Pentecost), Titius, from the diversity of clocks, estimates as probable that the feast day has already and has not yet arrived. Can he eat meat as on a feast day, and recite Compline and

approach the holy Eucharist because, at the time when he ate meat, the feast day probably had not yet arrived?

Answer. - First of all, this must be observed, that these questions pertain to probabilism neither proximately nor properly. If you except the fourth case concerning full refection on a fast day, all the rest directly allege probability of fact, and suppose that the use of a formless testament, of food probably (by probability of fact) forbidden, and an estimation of days from a private clock, are permitted. This supposition being made, now the question arises: is it lawful to use contrary probabilities? For the morality of an action which uses those probabilities must be examined directly. And its goodness or malice can be certain, or can be uncertain but probable. Therefore the individual cases must be weighed.

a) The two testaments are two causes numerically fully distinct. Moreover it is established from another source that Titius is permitted, according to his judgment or utility, to hold both testaments as valid or invalid. Therefore, while he treats one as valid and the other as invalid, he makes two options which, taken separately, are honest. And because they are joined to each other by no bond, nothing hinders the honesty of each.

Yet one must abstain from a scandalous variety of option, which is commanded by motives scarcely honest. Besides, the right administration of justice demands that a judge not change his jurisprudence without reason;

b) No probable opinion permits that a legatee consider a testament at the same time as valid and as invalid. For of the two opinions brought forward in this matter, one says that the whole testament, with legacies and burdens, is valid; the other says that the whole testament falls. Therefore the legatee makes an option whose honesty is by no means probable;

c) We think it must be said thus. Probability of fact - it is like the truth that such food is the food which I know to be certainly forbidden - creates a serious danger of violating the law. Wherefore this holds: "In morals to do and to expose oneself to the danger of doing are equivalent." Wherefore, unless I am excused by proportionate inconvenience, it will be permitted to me to eat neither food. Yet the inconvenience can be taken more benignly than if food certainly illicit were set out.

Yet there will be those who think differently. Most will say that mixed dishes from both foods are prohibited, because a dish composed of meat and fish is forbidden by certain law. All also will condemn him who indeed lets the bodies be separated, but has introduced confusion among them artificially: for we are forbidden to make fraud against the law. But if the confusion has occurred by chance, some will permit partial use, others successive total use;

d) Titius could honestly choose the morning dinner under the sole account of the one refection. By that choice the other dinner was excluded. Besides, both opinions concerning fasting have this in common, that they permit only one full refection. While the more severe opinion prohibits the morning dinner under grave sin, it by no means permits another full refection to one acting according to the more benign opinion. Wherefore this cunning of Titius is defended by no probable reason;

e) The difficulty of accurately knowing the time is the cause why, when a more certain indication is lacking, it is permitted to estimate time from clocks even private ones. Hence it happens that clocks, though improperly, are said to be probable doctors [1]. Moreover the most common opinion, which C.

de Lugo [1] attempts to declare by a very subtle reason, solves the case of Titius thus. Titius could not eat meat except as on a feast day. But food taken on a feast day prohibits subsequent communion on that day. Therefore it is not permitted to him to choose both the eating of meat and communion at the same time.

Yet in reality the respects of each fast, ecclesiastical and eucharistic, are diverse and can be separated of themselves. Why must they be joined in the estimation of the day? An intrinsic argument is desired. This at most can be said: because of the material affinity of each cause and a sort of congruence, the reasonable mind of the legislator is that they be joined. This reason seems sufficiently weak to us.

Certainly Lehmkuhl himself permits this, I, 205: He who, needing food and judging Friday to have passed, therefore eats meat and renounces the right of communicating, if afterward he is warned by another clock, in which he can equally trust, that he probably ate on Friday, can, by correcting his error, change his purpose and in the morning be refreshed with the Most Holy Eucharist.

Nor shall we condemn him who, using a discrepancy of clocks, eats meat as on a feast day and recites Compline as on the vigil. Why cannot distinct probabilities be applied to distinct actions?

[1] As if he should pronounce successively concerning each food: this food is probably licit.

[1] To him for whom only one clock is available, he must follow this; nor, unless perhaps there is question of one moment, can he presume that the later hour is indicated by another good one. For when another probable doctor is absent, we must follow the only one who is present.

[1] *De Eucharistia*, 3, 15, nn. 47, 52, 53.

— On neutral time. Matters must also be judged more benignly where the law itself permits a varied option of time. Canon 33, § 1 permits this: "in private celebration of Mass, in private recitation of the canonical hours, in receiving Holy Communion, and in observing the law of fast or abstinence, although the usual computation of the place is otherwise, one can follow the time of the place, or local time, whether true or mean, or legal, whether regional or another extraordinary time." And we have thought it consonant with the mind of the legislator that we should transfer this ample faculty also to indulgences and festive rest (*Summa novi iura*, n. 19. Cf. also Claeys Bouuaert, *Selecta capita Codicis*, n. 15).

By that disposition the legislator seems to us to have introduced, for these various actions or offices, a time almost common between two days or two parts of a day, which, as if neutral, can be attributed to either day or part of a day. Wherefore nothing prohibits that, according to true time, you recite the breviary; according to mean time, you observe the law of abstinence; and according to legal time, you attend to the eucharistic fast.

Article II: On Negatively Doubtful Conscience

— Statement of cases. This must be well held. Insofar as the doubt is negative, no reason is had, at least no serious reason, which would found a probable judgment and therefore could prudently direct the rational appetite. Wherefore, as we saw above, n. 362, a uniquely probable opinion approaches practically to one morally certain; and negative doubts of law, whether there is question of the first beginning or of the cessation of law or of its signification, are without moral use, or are contemned. Hence we said that he is safe who from his habitual diligence has a positive argument for confession

having been made integrally, for the whole office having been recited, etc., which is attacked by a negative doubt alone.

— But not rarely it happens, when the doubt is of fact, not of law, that each part is negatively doubtful. Thus it is a doubt of law: whether such a law was revoked or not; and canon 23 wisely establishes: "in doubt, the revocation of an existing law is not presumed"; but, what must be accurately observed, we are found in a doubt of fact when it is asked: is today Friday, or not, on which the law of abstinence obliges?

But now, when no reason of affirming or denying is at hand, there are those who wish to solve cases of this sort from the principle of possession. Thus Sanchez [1], several others, and also Noldin (2), who nevertheless admits that in a negative doubt of fact it is often difficult to understand what part possesses, so that other principles are rather employed. Wherefore, as they judge, if you negatively doubt whether a day of abstinence has begun or not, you will not be held by the law of abstinence; but you will be held if you doubt whether it has ceased or not, because in the former case liberty possesses, in the latter the law. Above, we showed that appeal to the principle of possession outside the matter of justice is vain. Some solve the proposed case in the same way, because, as they say, a fact is not presumed but must be proved. Therefore in doubt concerning the day begun the obligation of abstinence must be proved; on the contrary, the cessation of the obligation must be proved in doubt concerning the ended day of obligation. Thus Laymann, *Theol. mor.* l. 1, tr. 1, c. 5, n. 36; Noldin, *Principia* n. 249.

But the reason of the saying upon which they rely is lacking here. Why is a fact not presumed but must be proved? Because a fact of itself is accustomed to leave positive indications, so that if these are lacking, it now becomes like the truth that the fact has not arrived. But in the proposed case, while time passes in an equal manner, neither the beginning nor the end of the obligation leaves peculiar traces. But, even passing this over, if you consider the matter more accurately, the beginning and end of the obligation of abstinence are not so much facts as moral consequences which are connected with a certain hour. But the true doubt is this: is it the eleventh hour before midnight, or the first hour after midnight? But thus the fact appears uncertain on each side, so that the principle, a fact is not presumed, cannot truly be applied. Moreover, whether it is the night on which the day of abstinence begins or the night on which it ceases, the doubt is altogether the same; objectively the matters bear themselves in wholly the same way, so that common sense seems to repudiate two diverse solutions.

[1] *De Matr.* l. 2, d. 11, n. 32. - (2) *Principia*, n. 218.

— Solution from the mind of the legislator. More universally, therefore, we shall say what Laymann insinuates about the eucharistic fast alone, l. cit. n. 36: that cases or doubts of law to which doubts of fact, negative on each side, give occasion, must be solved according to the mind, prudently gathered, of the legislator. But from the mind of the legislator, we judge that this distinction must be employed.

1. Where there is question of a human law merely prohibiting, and no reason of justice or charity obliges one to forestall the danger of material error (v.g., concerning the law forbidding communion to one not fasting, or the eating of meat on such and such a day), the legislator can, without inconvenience, incline toward the more benign parts. And because rights are said

to be more prompt for loosing than for binding, it can prudently be judged that he truly followed those parts. Wherefore:

a) In invincible doubt whether or not after midnight you ate or drank anything, you will judge yourself not prohibited from communion. This other reason accedes in the case of communion, that, especially today, this cause is most favorable. Cf. concerning this matter St. Alphonsus, l. 1, nn. 38.39; and l. 6, n. 282.

Nor is he to be condemned who, in that doubt, invited by thirst or hunger, eats or drinks. If he had the moral means of knowing the hour, he could not honestly neglect investigation unless communion were to be renounced. But after he has sincerely done this, i.e., has renounced communion, if then reason or a special devotion urges communion upon him, he does not seem to be prohibited from access to the sacred table;

b) We by no means praise, as is clear, him who intentionally or without reason chooses a time at which he negatively doubts concerning an ecclesiastical obligation, v.g., of abstinence, for example, to eat meat.

But he who, after he has investigated the matter according to the abundance of examination which is morally at hand, doubts whether or not the twelfth hour of the night has been heard, can reasonably choose for himself the more benign parts, whether there is question of abstinence, or of fasting, or of servile labor prohibited on feasts.

2. But where some precept must positively be fulfilled, or a positive condition is prescribed for a certain office or use, it is necessary that at least by probable reason the occasion of fulfilling the precept be had, or that satisfaction can be made to the required condition. This is demanded by the common good, to which the legislator adapts his mind. Wherefore:

a) The time which is defined by a commanding law as fit for fulfilling a positive office, v.g., for reciting the canonical hours, must be at least probably present. Therefore St. Alph., in order to defend his benign solution of doubts concerning the eucharistic fast preserved, argues from this, that there is question not so much of a positive law requiring the fast as of a prohibiting law, which forbids that you approach not fasting. Cf. l. 1, n. 38;

b) He who negatively doubts concerning his age, whether or not he has completed the years by which he can receive sacred order, obtain a benefice, or celebrate marriage, is forbidden either to receive sacred order, or obtain a benefice, or celebrate marriage. For the condition positively required for orders or for a benefice or for marriage must be demonstrated by at least probable reason. For the common good demands that only fit persons receive orders, obtain a benefice, contract marriage.

3. Finally, if the legislator has bound subjects by a law once a condition has been posited, as long as that condition has not been positively established, the subjects are not held by the law. For the common good also demands that a burden not be imposed unless certain. Wherefore he who doubts whether or not he was born twenty-one years ago will not have to fast.

Summary

— I. On notions. Properly, that is called morally certain which is established from the character and morals of men; and more strictly, if an exception in a particular case is excluded; less properly, concerning a thing which is so like the truth that only a positive reason for doubting is absent. Wherefore a uniquely probable positive opinion, which is impugned by no grave reason, is assimilated to what is morally certain. By a different use, moral certainty is called adhesion, even most firm, which is commanded by the will, as is the very adhesion of supernatural faith.

But the probable is that which rests upon such a motive by which, although it is fallible, a grave man is inclined to assent. The motive can be intrinsic to the thing, or extrinsic: the authority of doctors. This founds a presumption of an intrinsic motive, and can be the cause why a human legislator tempers his own law according to received opinions.

Positive doubt can be converted into opinion or assent with fear of the opposite. That assent is made at the command of the will, nor does it contain more perceived truth than the doubt itself.

According to the degree of probability, two opinions can be of morally equal probability; or one can be more probable than another. But the more probable can be false, and the true one less probable, so that to one following the more probable it cannot be said: you approach more to the truth.

Only experts in theology or in the science upon which the solution depends can judge concerning the intrinsic probability of an opinion; concerning the extrinsic, by reading approved authors, even the moderately learned can pronounce. Extrinsically probable is what several expert men, who have examined the matter, say is probable; indeed what one prudent man says, if he has investigated the matter more deeply and adds a reason not to be despised. But doubtful probability cannot found a prudent opinion.

The unlearned will usually obtain for themselves a probable judgment concerning the honesty of their action from another's authority; and no one ought to examine all things intrinsically by himself, but all can trust approved authors.

Safe is said of the part which one can embrace without formal sin; safer, or less safe, of an opinion according as it stands for obligation or for liberty.

II. Various systems. A moral system is said to be a proposed way of arriving from speculative doubt to a practically safe way of acting.

Because it necessarily happens that direct certainty concerning the honesty or malice of an action is inaccessible to us, and because there is not a threefold practical conclusion of the will as there is a threefold state of mind, which can affirm, deny, and doubt, therefore it is necessary to have recourse to certain principles (reflex) which offer the will a certain practical norm.

Rigorists condemned every action whose honesty was not demonstrated at least as most probable.

Probabiliorists (several Friars Preachers) deny that an action is honest unless its honesty is at least certainly more probable.

Equiprobabilists (Fathers of the Congregation of the Most Holy Redeemer and several others), besides, permit that, when the probabilities are morally equal, answer be made for liberty when there is question of a new law or the beginning of an obligation.

Probabilists (Friars Minor, Fathers of the Society of Jesus, and very many others), when the question immediately turns upon the liceity of the action, always permit the use of a solidly probable opinion.

No one is theoretically a laxist: practically he was and can be one who is content with slender probability, or too easily pronounces an opinion to be solidly probable.

St. Alphonsus defended simple probabilism through the greater part of his life, which afterward he tempered by his sayings so that he might exclude every laxism more. By circumstances he was also compelled to open his opinion less clearly; and by his humility he was moved to abstain from professing absolutely an opinion then greatly attacked.

The system of compensation does not admit the use of a probable opinion except when a proportionate cause excuses the permission of material sin.

Today the controversy survives more theoretically than practically.

III. Refutation and proof. Rigorism, excluded by authority, sins by denying the principle concerning the conditions necessary that a law truly oblige.

Probabiliorism is also deceived by the error of the destruction of contrary probabilities.

Equiprobabilism besides wrongly applies the principle of possession.

The system of compensation sins because there is not always place for fearing material sin; and there is always a sufficient reason present for permitting the danger of material sin. And when compensation seems merely probable, it must necessarily use another system.

Simple probabilism rests upon these certain principles: that there is no law not promulgated; and that the application of law is not had without knowledge of the law, or cognition certain in a human way.

Logically one must be either a probabilist or a tutiorist.

IV. Use of probability. He who is truly persuaded of the error of a common opinion cannot follow it, with saving of the benign mind of the human legislator, which may permit the use of the interpretation of approved authors. Yet it is always permitted to a confessor to accommodate his answers according to an opinion which is held as probable. In acts at least formally diverse, nothing of itself hinders the simultaneous use of opposite probabilities, unless by the prior election the other is virtually demonstrated to be excluded.

But the law itself, for fulfilling various positive obligations, has introduced a time almost common to two days, which can be attributed to either day or part of a day.

Doubtful probability does not provide practical security.

V. On probability of fact. Probabilism cannot be applied immediately to probability of fact. On the contrary, here the principle holds: in morals, to do and to expose oneself to the danger of doing are equivalent. Hence we are obliged to embrace the safer parts. Except if the legislator, because of doubt of fact, relaxes his obligation, or if probability of fact can be converted into probability of law, either because there is no obligation of forestalling the danger of error, even material error, or because approved authors affirm the probability of the liceity of the action in these circumstances.

VI. Negative doubts of law or fact are of themselves to be contemned. When each part is negatively doubtful, the solution must be sought from the prudently estimated mind of the legislator. Wherefore a merely prohibiting law does not seem to have to be urged; but a positively required condition must be satisfied at least probably. If subjects are bound conditionally by some law, they are not held by the law until it is morally established that the condition has been fulfilled.

Title II: On Habitual Conscience

The usefulness of this title is very great for the direction of souls or the pastoral ministry.

Article I: On Right and Tender Conscience

— I. What a right conscience is. We call that conscience right which habitually pronounces truly concerning the honesty or dishonesty of an action, according to those dictates persuades or dissuades the action, and praises or censures actions done according to their merit.

This is conscience fully right, for producing which the intellect concurs with the will. For practical-practical judgments are commanded by the will.

Conscience must be called right in a diminished way when only its speculative-practical judgments are accustomed to agree with truth, so that practical persuasions and consequent affections disagree with speculative views.

II. What tender conscience is. The perfection of a right conscience is its tenderness. For that conscience is called tender or timorous which perceives even slight reasons of honesty or dishonesty, antecedently persuades or dissuades, and consequently approves or reprehends.

— Estimation. A right conscience must be held in the greatest esteem. For formally, as much as truth must be esteemed, so much praise must be attributed to it; and besides, by its judgments already and then by its goads, it is a source of moral goodness.

But as tender, it has an increased price from the quality of subtle wit, and from many good acts which would not affect a less sensitive moral balance. And it adorns man with a certain grace and flowering beauty. Finally that good conscience, whose companion is charity (1 Tim. 1, 5), at the same time strengthens the soul by an ineffable force, pacifies it by an ineffable quiet, and gladdens it by an ineffable sweetness. For, as if the forerunner of the eternal Judge, it foretells those unshaken sentences, avengers of injuries, which compensate present iniquities so that the just man may continue to walk firmly in his ways; and it seems to begin the eternal largess of undisturbed peace and happiness.

— Conditions and acquisition of a right and tender conscience. A right and tender conscience supposes a good quality both of intellect and of will: of intellect, which is suited for perceiving and weighing true reasons; of will, which dares and wills to command according to things perceived. The gifts of each faculty are partly innate, but partly can be acquired by free exercise. To this end the study of truth and sincerity greatly contributes, both exterior and also interior; a use of words alien from every excess; cleanness of heart immune from less ordered affections; preparation of a firm will; flight from every sin from a filial spirit. For delicate services are unknown by servants and hirelings, as such, but are proper to sons.

These pursuits must be fostered not only in ourselves but especially also in those whose care we have: for the most joyful fruit of prudent discipline and instruction is a good conscience. And in this supernatural order, we shall be helped very much by prayer: "Create a clean heart in me, O God, and renew a right spirit within my bowels" Ps. 50, 12.

— The precarious conscience right in a diminished way. Scarcely ever will the imperfect or diminished rectitude of conscience be preserved. For every less good action, just as it has its root in some error of the intellect, so also tends to vitiate or obscure the intellect itself.

Nor does the appetite long tolerate opposition between our actions and moral judgments. Wherefore it will try to apply the intellect to considering and estimating those reasons which lessen or excuse sins for the sinner: i.e., little by little it will pervert the intellect.

Article II: On Scrupulous Conscience

— I. Various notions. 1. Called from a rough little stone which, by entering the shoe, makes walking troublesome, scruple already by Cicero (*Rosc. Amer.* 2, 6) is transferred to an uneasy solicitude of soul. But objectively it is a certain slight and empty little reason, whose solution is not found, and on account of which an action would be either prescribed or evil; or, subjectively, the consequent and anxious fear concerning obligation or the malice of an action.

Therefore in this place, scruple is taken especially for a morbid anxiety of soul concerning an obligation to be executed or concerning sins committed.

2. Scrupulosity is called antecedent when, solicitous concerning obligations, it regards future acts; consequent, when, adhering in sins, it affects past acts.

According to varied origin, it is innate, transmitted by heredity, or acquired, which must be attributed to institution, companions, accidental disturbance.

According to varied extension, it is general or particular, when anxiety is detected in almost every matter, or, on the contrary, is circumscribed by a few arguments, indeed by one.

According to varied intensity, it either contains true scruples, or only the beginning of scruples or even remnants in him who is recovering from scruples. This diminished scrupulosity is manifested by a certain hesitation or fear.

According to varied permanence, it can be long-lasting or brief.

3. Scrupulosity can be ascribed to a certain kind of "phobia." But this is the form of its process. It takes its beginning from a fatiguing deliberation concerning the honesty of an action or from an examination of an action done. After one has at length arrived at some conclusion, the opinion obtained in so laborious a way is soon contradicted internally by various reasons, often strange and objected, which impel the scrupulous man to deliberate again and again concerning confirming or reforming the opinion. Finally, as if compelled by necessity, he rushes into action: he says or does the things concerning which he was anxiously inquiring; he makes confession anxious about an incomplete examination, about an act of contrition not elicited; he receives the Eucharist, by no means secure concerning the state of grace. Hence a new scruple, that he has acted against conscience, or with a practically doubtful conscience.
4. Marks of the scrupulous man. To the man who diligently observes them, scrupulous persons seem acute and as it were clever in finding and distinguishing reasons; pertinacious in a certain estimation of their own arguments; yet at the same time timid in conclusions, and, by a certain distrust of themselves, suspecting a defect of words in proposing difficulties, of intellect in

grasping or interpreting responses, of memory in retaining either counsels given or chiefly positive precepts, or their own very deeds, so that they doubt concerning a door closed by themselves, a light extinguished, hours recited, Mass heard; and especially in the purpose of preserving peace, of being silent about scruples, of omitting a new inquiry into the matter, of obeying simply, they are inconstant and little firm.

They labor or remain wavering in no general principle, nor in the dialectical texture of a syllogism or reasoning, but in the application of the principle to their state or to their deeds, that is, in the "minor," so that it is troublesome for them, and sometimes altogether impassable, to pronounce concerning the quality of a motive (vain, serious), of diligence employed (sufficient, slight), of a cause on account of which it is permitted to omit fasting, to disapprove the deeds of another, to narrate, and concerning the quality of their state (temptation overcome, admitted).

Therefore the illness is not of the intelligence alone, but also, indeed rather, of the will; and, insofar as it is intellective, it affects less discursive reason than intuitions, not indeed the highest, but those by which either individual facts or facts collected together are directly, as if by one glance, to be estimated and judged.

A liberal and strong soul, just like one pusillanimous and applied to loving itself, can be joined with scruples. Yet as such, the scrupulous man is never shown to be generous and magnanimous, since he is uneasy concerning his guilt, concerning his future lot, but not concerning loving God, helping his neighbor, or the more perfect good.

Distinction from excessive rigor. Since anxiety, a certain disturbance of soul, pertains to the essence of a scruple, scruple must be well separated from a propensity even excessive toward severity, or from tranquil errors of doctrine or of judgment, just as by St. Ignatius in the rules concerning scruples it is distinguished from these.

[1] Several writers in France and Italy have written concerning scruples and their remedies. V.g., Dr. Raymond, R. D. Toulemonde, R. P. Gemelli. The best work, including, besides the common part, a special part for the use of confessors, is: *L'Ange conducteur des ames scrupuleuses ou craintives*. Bruges, 1905. Natale Turco is also praised, *A uso degli ammalati, medici e confessori. Il trattamento morale dello scrupolo e dell'ossessione morbosa*. 2 vol. Turin, 1919 and 1920.

— II. Signs of scrupulosity. These can easily be drawn out by a confessor from the description just made. But for the scrupulous man himself, no better demonstration can be sought than from the judgment of his prudent confessor.

— III. Theology of scruples. 1. A man who, from a speculative apprehension even to be despised in itself, has definitely judged that his action is forbidden to him or is of only doubtful honesty, would labor under an erroneous or doubtful conscience, with which it is by no means permitted to act. Then scruples enter the very dictate of conscience; from them conscience has been formed. But this is not the case of the scrupulous man who from the warning of the confessor is commanded to contemn his scruples. He himself, even when he works fearfully, readily has this formal or virtual judgment, that a scruple can safely be neglected by him. Wherefore the consents which he says he has given, either to a depraved interior suggestion, or to the purpose of acting however the morality of the action may stand, or to this conclusion: "I shall sin and then by confession I shall expiate the sin," must be ascribed to the fantastic order. That is, fantasy represented assent of this sort to him, so that he seemed to himself as if he saw himself acting thus. Nevertheless, not otherwise than in a dream, he

gave no free consent to those suggestions or purposes; perhaps he made this use of the confession alone foreseen, that from it he might become more courageous for acting against scruples. Wherefore for a scrupulous man who, v.g., from the counsel of a confessor, knows habitually that his doubts must be contemned by himself, it is lawful to act with a scrupulous conscience, or with the scruple remaining. For that knowledge provides him a certain conscience. Indeed he must act thus, because, since it is not in his proximate power to remove the scruple from himself, with the scruple remaining, he can only either yield to the scruple, increasing his weakness, lessening his moral forces and liberty itself; or, from impatience, change his good will and embrace formal sin, trampling the scruple under foot in this way; or, preserving a good will, neglect and overcome the scruple from the approved rule of despising his doubts: which way of acting alone is reasonable, salutary, and honest.

2. It can indeed happen that, in the process of scrupulous reasons, scrupulous persons labor for a long time, and are so wearied and disturbed from the struggle that they rush blindly into action: but then they are deprived of the liberty necessary, at least for sinning gravely.
3. By a similar reason, promises, vows, blasphemies which some often, indeed almost daily, dream that they have made or said, can be held as fictitious. A confessor should simply refuse to hear or estimate these things.
4. The obligation of attacking scruples is present, and indeed grave, where scruples cannot be combined with the office of state, v.g., of a parish priest; or where they induce a sufficiently proximate danger of ruin, whether mental or spiritual. Yet a man who is gravely scrupulous will scarcely incur subjective guilt, provided that with his weak will he is willing to strive against scruples in general.

— IV. Medicine of scruples. The physician ought chiefly to look to this, not that he solve the difficulties speculatively and satisfy the intellect, but that he communicate or restore sufficient courage or confidence to the will of the sick man, and that the scrupulous man may dare to act according to common sense, of which he is by no means without share.

Moreover treatment usually includes these two stages: immediate aid must be furnished to the needy man, and complete healing must be prepared from the beginning.

1. Immediate aid consists in this, that the physician by his own will supply what is lacking of efficacious command in the will of the sick man. Therefore he ought to take care that he have authority with the sick man. Wherefore: a) he will be helped by the esteem by which the scrupulous man holds him as an upright and holy man; b) he will be helped by the name of doctrine and science. The physician should not lessen that esteem, and therefore let him be brief in the explanation of his counsels, lest, among the motives alleged, the scrupulous man find one less solid, on account of which he begins to doubt concerning the rest. Especially let him abstain from repeating the exposition which the scrupulous man made of his difficulty or his case: for if the scrupulous man has spoken at length for some time, it can scarcely happen that he does not detect some diversity between his narration and the physician's, whence he judges the case not understood and therefore not solved; c) the physician will be helped by firmness of face, words, and speech: let him pronounce nothing hesitantly; d) he will be helped by monopoly: let him beware lest the scrupulous man, by questioning others or consulting

books, observe some discrepancy of opinions, on account of which he begins to distrust his physician.

He will use his authority for imposing norms that are few, clear, brief, such as scarcely give place to distinctions and exceptions. He will propose these, accommodated to the necessities of the scrupulous man; and in kind they are twofold: some are materially and formally true; others are only practical formulas for emerging from scruples, which the confessor, from his conscience known to himself, can prescribe to the scrupulous man.

1. Moreover the theology of the scrupulous man furnishes these things: a) Scruples are an inconvenience which truly dispenses from several positive obligations: v.g., from material integrity of confession, from the precept of fraternal correction;

b) Even with probability of particular error, the scrupulous man, intending health, can consider as universal and follow a rule by which of itself he does not recede from honesty, and will be led, as is hoped, to more or less full health. For he has a right to employ efficacious and of themselves honest means for being healed. But the effect of error is accidental and, on account of a proportionate cause, legitimately permitted.

Relying upon these principles, the confessor, according to the opportunity of the scrupulous man, should free him from every solicitude of warning superiors, correcting equals; should set him a maximum time for searching his conscience for confession, or remove from him the whole burden of examination properly so called; should reduce sacramental accusation to a few points or to external sins alone; should command him to be silent concerning past confessions.

2. Certainly he cannot dispense him from any natural or divine law. Wherefore he will not formally assent to one asking: "Can I adhere to depraved delights?"; but he will warn him to turn his soul away from doctrinal rules, ruinous to him, and to follow the practical indications of his confessor. He will substitute for the rules by which the scrupulous man is impeded other, simpler and cruder rules. Let these be examples: "Care for nothing unless it is plainly established to you as 2x2 = 4." "Neglect everything that seems doubtful to you, and judge that you doubt if you ask whether you doubt or not." "Care for external acts alone, neglecting all questions concerning internal assent, desire, etc." "Choose at once without deliberation." Indeed, in a more extreme case, to a penitent otherwise morally upright, he could advise this: "Act as if you were loosed from every duty, so that you reckon yourself only invited to acting well."

II. Healing. But at the same time the confessor will try to extirpate the illness by the root, lest the scrupulous man be enslaved forever to the counsels of another. Therefore:

1. To enlighten his intellect, he will teach him that in moral matters mathematical proofs are not to be sought; that little attention is to be given to the things which merely can be or happen, but that our providence is limited by probable things; and that anxiety, which is in the appetite, cannot be confused with the judgment of the intellect.

2. To strengthen his will, he will stir him in a more universal way to a firm mode of acting in every matter; he will command him to neglect the anxiety which he experiences in acting; he will urge him to have and foster a purpose of sharp battle against scruples, on account of these or similar causes: that scruples hinder, far from favoring, the progress and merit of the soul; that men are impeded from many good works, especially apostolic ones, on account of scruples; that nothing generous, nothing noble, is present in scruples; that it is pleasing to God and to Christ that he put away a scrupulous soul; indeed that he ought to do this; that therefore he will be safer if he contemns and expels scruples than if he lets himself be anxious and be deceived by very small matters.
3. It will often be useful that the scrupulous man be occupied in many things: since then he is not free to turn many things over in his mind, and, compelled by the very necessity of more prompt action, he recognizes the harmful foolishness of scruples.
4. By fervor of life he will be no less impelled to conceive greater confidence which dares to contemn scruples.
5. The confessor will gradually lead the scrupulous man to solving his own cases by himself, forbidding, v.g., that he propose doubts more often than once or twice in a week or in a month; that he recite more than two or three; by suggesting that he act in that way which, in his estimation, other men would commonly hold, or which the director of souls would indicate to him; and that he cast away every fear which others would not seem to him to be going to experience, or which they would hold as vain and ridiculous.

Finally, conversation with friends who are good and of a strong soul, books concerning heroic and holy men, are not without usefulness. Indeed physical care of the body must not be neglected.

— The worse case of the scrupulous. While one can deal broadly with pious and good scrupulous persons, he must be moderated more cautiously who joins scruples with true spiritual tepidity and true sins. His case is far more encumbered. Besides rules which are formally true, by which, v.g., he is exempted from too troublesome a discussion of conscience, from fraternal correction, other dispensations often will not be able to be given without danger of abuse. Wherefore it will sometimes be useful as counsel that he be warned that he can be freed from many troubles if only he begins to live more fervently; and that he is particularly invited by God to draw from scruples an occasion of fervor.

— Concerning special anxieties these few things can be added:

a) He who is too solicitous concerning the canonical hours or certain prayers should be prohibited from reciting anything twice, for any cause whatever; and let him judge that what he fears he has omitted has already been recited by him. And since the law of the Church does not oblige with great inconvenience, the confessor can prescribe for him a time in which he should conclude the recitation of the hours, so that he omit what perhaps remains; indeed, if the matter demands it, he can relieve the scrupulous man from the burden of the breviary;

b) One anxious concerning faith and hope should not labor in eliciting acts, but should simply commend and commit himself to divine Providence;

c) One anxious concerning past confessions should not be heard concerning these;

d) One anxious concerning a fantastic representation or organic disturbance which he suffers while looking at honest or harmless things should accommodate himself to the morals of men who are honest, and contemn the motions or fantasies.

N.B. Sufficiently similar to the scrupulous are several who, while they wish to believe, are disturbed by a certain appearance or apprehension of difficulties. In both, anxiety by no means produces a doubtful conscience concerning honesty or concerning faith. In both, the cause of fear is often that from the intellect alone, or reasoning, they think certainty must be sought which, in the moral and religious order, must be obtained by each faculty: intellect and will; add here the necessity of grace. In both, besides prayer, the remedy is often in correcting and perfecting the will, so that it becomes firmer, purer, nobler in intention; finally, in both, by the very command by which the action or the assent of faith is commanded, a certain conscience concerning honesty or faith is of itself demonstrated.

— V. Usefulness of scruples. Scruples have a temporary usefulness of expiating sins and rash actions, of humbling and mortifying man, of purifying intention, while in that desolation he continues to hold the way of virtue and fervor; finally, of increasing his psychological experience, by which the scrupulous man, once healed, will be able to profit others.

Yet long-lasting scruples weaken strength, impede many good things, cast man down to an excessively timid and restricted action; and by a certain despair lead him to renounce the more perfect life, indeed virtue.

Article III: On Lax Conscience

— Notion. A conscience is called lax both when it cares for grave sins alone and, more properly, when, from a habitual disposition, it judges erroneously or on account of a lighter reason, either before an action, that this is permitted or at least is not prohibited under grave sin; or after an action, that this certainly lacked grave malice from the object, imperfect advertence, no consent or not full consent, when these were present in reality. Hence it is antecedent or consequent.

— Rules. He who, from the warning of a prudent confessor, knows that he labors under this vice of conscience:

a) Ought to strive against laxity, unless he wishes to commit grave guilt of ignorance and to have to render an account morally for errors, insofar as they were foreseen in confusion. To this end the study of reflection, or of greater consideration, pious exercises, prayer, and frequent approach to the sacraments are useful;

b) Once doubts have arisen, he ought to explore them more diligently than others before he despises them as empty; and he actually sins gravely as often as he acts with knowledge at least confused of the gravity of sin or of the grave obligation of inquiring more. Yet from his very precipitation, because of deficient deliberation, he can be excused from grave sin; which will more easily be admitted in him who has begun to employ effort toward correcting the vice;

c) The confessor will rather presume that the consent of this sort of penitent, concerning which he doubts, was full. Unless he had consented, "he would not even doubt" (Lehmkuhl, I, 139). At the

same time he will warn him concerning the harms of his state, nor of itself will he permit that, in his doubts, he receive sacred communion without having confessed.

Summary

— I. A fully right conscience, which answers, persuades, and approves or blames according to truth, must be held in great esteem. Its perfection is tenderness. A conscience right in a diminished way, whose persuasions disagree with judgments, is precarious.

II. Scruple means morbid anxiety, which must be ascribed to the genus of phobia, and is explained more by defect or weakness of the will than by defect of the intellect. It differs greatly from a quiet propensity toward more severe things.

The scrupulous man can estimate himself as such from the judgment of a confessor. It is permitted to him, with anxiety remaining, to act. Although scruples for some time are not without usefulness, he has an objective obligation of eliminating scruples.

The treatment of the scrupulous man includes two stages: in the former, he is led by another's authority; in the latter, he is taught to recover his own governance of himself. Even with foresight of accidental error, he can accept and follow absolute rules of acting. The care of a tepid scrupulous man is more laborious than that of a fervent one.

III. One must act against an excessively lax conscience. It must be corrected by greater reflection and distrust of one's own judgment. From custom some precipitation will be able to be excused because of inadvertence. Against one excessively lax, doubts will rather have to be solved.

Conclusion

— These, as it were, the chief heads of the treatise on Conscience seem to have to be retained:

I. No human action can be withdrawn from every divine law, so that every question concerning probabilism turns upon the obligation of a particular law, the suppression of which permits the general norms to which human actions must be conformed to remain untouched.

II. The question concerning probabilism pertains to the treatise *On Laws*, insofar as, in handling that question, we use the principle concerning the necessity of promulgation so that a law may exist; it pertains to the treatise *On Conscience*, insofar as knowledge of the law, or certain intimation of conscience, alone imposes the law. Yet formally it finds its place in the treatise *On Conscience*, since it is asked immediately in what way a speculatively doubtful conscience becomes the proximate rule of human action.

III. The prudent use of probabilism today is permitted by morally unanimous suffrage, so that the principles can be weighed with a more serene mind.

IV. Doubts of fact are to be solved not by the principles of probabilism, at least directly, but by their own rules.

V. The rectitude of conscience must be held in the highest esteem, both for perfection and for our action. This must be obtained by us with every effort, as a splendid aid of virtue, internal peace and liberty, and all beatitude.

Treatise V: On Sins

Title I: The Notion and Division of Sin. - Mortal Sin, Venial Sin, Imperfection

Chapter I: On Sin in the Confused Sense

Usefulness. Since the study of moral theology is chiefly ordered to the right administration of the sacrament of penance, in which the minister is in the first place a judge concerning sins to be absolved, the moment of the whole treatise on sins can escape no one. In the first chapter, moreover, we already hand down several things which in reality are fundamental, concerning the very essence of every sin; concerning its specification and its seat. Nor today can the question, once so greatly disputed, concerning philosophical sin, be neglected (1).

N.B. We shall treat of sin in the confused sense, not because we propose to speak here without order and clarity, but because, from the beginning, we wish strongly to inculcate this: that there is not some genus of sin under which mortal and venial should be placed as species. Therefore we give a confused notion of sin, when we do not speak separately of each sin. If there were a common genus, Chapter I would be inscribed: On sin in common.

— I. The name of sin and its confused description. The word sin was already often used by Cicero himself to designate a human act deformed from its rule or law [1], as in the most beautiful saying: "Apart from fault and sin, nothing can happen to a man which is horrible and to be greatly feared" (*Ad Fam.* V, 21).

By nominal description, sin is called a morally evil act [2]. In these words, the word *moral* does not designate a genus, of which there would be the two species, good morality and evil morality. For there is no common notion of morality which indifferently becomes good or evil, as the same notion of animality is preserved in man and in the brute; but he who says a moral act already says, confusedly, a good act or an evil act, just as he who names being already insinuates such a being.

Furthermore, although the description related falls upon mortal sins and upon venial sins, and although we are accustomed to speak of the theological specification by which mortal sins are distinguished from venial, nevertheless there is not even a genus of sin whose species would be mortal and venial sin: but, as will easily appear from the notion to be handed down here, there is sin properly so called, mortal, and there is sin of diminished notion, venial.

[1] Because laws are of art, therefore by metaphorical usage an artisan can be accused of having sinned against art.

[2] *Summa*, 1, 2, q. 71, art. 6.

— II. Essence. Insofar as it is an evil act, sin says some privation of good, which here will be some departure from the order of reason or from the law of God; but insofar as it is a moral act, it necessarily says some good which is inordinately sought. For evil as such is not appetible, but we do not choose it except under the aspect of good, or as joined with the good which we love. Hence, as such, evil is not voluntary except *per accidens*. But although the act is wholly evil and the omission is wholly evil whereby, on account of some good, we choose or embrace evil, nevertheless it is a lesser evil to will evil under the aspect of good than under the aspect of evil. Therefore, in that tendency toward good, in that election of evil under the aspect of good, there remains a trace of positive order. Hence that saying of St. Thomas, that evil in morals is not pure privation; but "is a certain good joined to the privation of another good" [1]. Whereas in the physical order there is had total privation,

for example of vision by blindness, and partial privation, by dimness of sight. Only observe that, in the physical order, what remains of vision in one who sees dimly is simply good, whereas in the moral order the positive appetite itself is evil, because it founds the choice of evil.

[1] *Summa*, 1 p., q. 48, art. 1 ad 2; 1, 2, q. 73, art. 2.

— III. Specification. If in every sin there is had some appetite of a good object, which of itself is voluntary, and an appetite of evil, which is only voluntary *per accidens*, since voluntary acts are specified according to that part by which they are voluntary of themselves rather than according to another by which they are only voluntary *per accidens*, hence again follows that consequence or corollary indicated by St. Thomas, that the moral specification of sins is made by the objects to which the sinner turns himself, rather than by the privation which accompanies the pursuit of the object. Hence it happens that mortal sin, or sin properly so called, and venial sin, or sin of diminished notion, can agree in the same moral species. (Cf. 1, 2, q. 72, art. 5; q. 73, art. 3, and below, n. 426-427.)

— IV. Distinctions. Sins are distinguished:

1. Into deliberate sins, which are committed from full consent, and surreptitious or semi-deliberate sins, in which full advertence was lacking, or where only a certain remissness in repelling the suggestion of evil can be charged to the will.
2. Into sins committed in duties toward God, toward oneself, toward one's neighbor, from the order or proximate object to which they pertain. Duties toward God, moreover, are ruled both by the theological virtues and by the moral virtue of religion. The material object of the former is God himself; the material object of religion is the worship of God, taken most broadly.
3. Into sins of malice, of infirmity, of ignorance, according as the free choice of evil is made without any illusion of ignorance and affection of the senses; or guilt is lightened because of the impulse of passions, of temptations, or because of a certain ignorance, although blameworthy in itself.
4. Into sins of heart, of mouth, of work, according as they are completed by the mind alone, or also by words, indeed by external action. Observe that there are sins, say hatred, blasphemy, which are perfected by mind or words, while others are merely begun by mind or words: say the internal intention and the external proposal of stealing.
5. Into sins of commission or omission, according as a prohibited action is done or a prescribed action is neglected.
6. Into one's own sins or another's sins: the latter consist in illicit cooperation toward another's sin.

— Formal sin, material sin. Sin is properly formal when it is formally opposed to the dictate of conscience and at the same time, of itself, to the dictate of law, while material sin disagrees with the remote rule of law alone, but not with the proximate rule of conscience. Material sin excludes free consent into evil.

Wherefore material sin supposes: a) a person who is subject to the law; b) an act which of itself is done freely, and therefore can be deliberated, not however a first-first movement; c) an act prohibited

by law, such as passive pollution is not; d) error or a certain good faith of the agent with ignorance of the prohibition.

[Supplementary note to n. 395.] There we described the material sin which he commits who acts freely but ignorantly. But another reason of material sin is had when an evil act is done by him who, on account of madness, sleep, or drunkenness, is not master of himself.

— V. Subject of sin. In every power, moreover, which is a principle of acts, sin can be present, dependent, of course, on the will. Wherefore sin is had in the sensitive appetite, in reason, and in the will. (Cf. 1, 2, q. 74, art. 1-4.) It is not had in powers which we rule despotically, for example, in the locomotive power.

— VI. Concerning philosophical sin. We know that sin is present psychologically where action has been taken against the absolute dictate of conscience. And there is no doubt that sin is opposed at the same time to the order of reason and to the law of God [1]. Moreover, it is called theological insofar as it offends God; philosophical, insofar as it repugns the order of reason. Merely philosophical sin, therefore, would be that which is opposed to right reason but not to the law of God.

That no such sin exists objectively is most certain, for "whatever is contained under the order of reason is contained under the order of God himself" [1], and therefore is sanctioned by the most wise will of God. Besides, without God there would be neither the order of reason nor honorable good, since the essences of things have their ultimate foundation in the divine essence, and are formally constituted by the divine intellect.

But it is asked whether a man who perfectly or invincibly is ignorant of God as author and preceptor of order and reason can sin merely philosophically: or whether, on the contrary, it is repugnant that the same man should say that something absolutely must be done or omitted, and not advert, at least confusedly, to a divine command.

That this should happen regularly, so that some ordinary division of sins into philosophical and theological should be proposed, must be altogether denied. Alexander VIII, decree of the Holy Office, August 24, 1690, condemned as scandalous, rash, offensive to pious ears, and erroneous this proposition: "Philosophical or moral sin is a human act disagreeing with rational nature and right reason; but theological and mortal sin is a free transgression of the divine law. Philosophical sin, however grave, in one who is ignorant of God, or who does not actually think of God, is a grave sin, but it is not an offense of God nor a mortal sin dissolving the friendship of God nor worthy of eternal punishment" (Denz. 1290). But not a few scholastics, holding the matter rather as hypothetical, think that this can happen in strictness: thus Lessius, Suarez, Vasquez, Lugo; while others contend that the same thing strictly repugns. Thus today C. Frins and several others.

Concerning this matter we think it must be said as follows.

He who perceives the absolute obligation of doing good and declining from evil, at the same time spontaneously, in the order perceived, perceives at least confusedly an ordering force dominating him, which he obeys while he does good and declines from evil; which he resists, from which he makes himself alien, if he does evil. In this way, however, he tacitly acknowledges God as legislator, and by his action either honors or more or less despises him. Therefore, if he has acted badly against conscience, he has at the same time acted against God. Cf. Lehmkuhl I, n. 281.

Those, however, who explicitly deny God and then turn their mind to the imperious commands of conscience are logically brought to the conclusions of modern impiety, which simply denies absolute moral duties. It is indeed decorous to preserve the order of reason; noble is the appetite of satisfaction which is begotten from an order preserved. Yet this belongs to the genus of relative goodness which alone is open to man, and which therefore can be outweighed by a greater goodness. And in very truth, with God set aside, the necessary dictate by which I judge that one must act honorably and the equally necessary appetite of one's own beatitude often cannot be reconciled with each other. That absurdity or contradiction causes each necessity, at least in an elicited act, to be denied as absolute.

[1] Not rarely here a passage of St. Thomas, 1, 2, q. 71, art. 6 ad 4, is badly alleged, as if the Holy Doctor there had handed down that every moral malice is rooted in divine prohibition, so that, for this reason, when divine law is being treated, that celebrated distinction must be denied, by which some things are called evil because prohibited, but others prohibited because evil. At first sight St. Thomas seems to teach this in the place indicated. For he has it thus: "When it is said that not every sin is evil because prohibited, it is understood of a prohibition made by positive law. But if it is referred to natural right, which is contained first indeed in the eternal law, but secondarily in the natural judgment of human reason, then every sin is evil because prohibited." But that interpretation is excluded by the final words which ought not to have been neglected: "for from the very fact that it is disordered, it repugns natural right." For by these words the disordered thing is proposed rather as logically prior to the right of nature. But it must be said that the question concerning that priority, or concerning the relation of divine prohibition to the malice of an act, is not touched by St. Thomas in this place. His present intention is this: to demonstrate that the definition of St. Augustine is true, by which sin is called "something said or done or desired against the eternal law." But for this it is enough that no evil exists which is not prohibited by that law, so that it draws its malice, whether first or second, initial or complete, from opposition to divine law. Here, therefore, the Holy Doctor already affirms what he will repeat more than once, that by divine law, not by human law, all sins are prohibited and punished. Cf. 1, 2, q. 91, art. 4 c. (where Augustine is alleged from the same book I *On Free Will* from which he was brought forward in the present objection); 1, 2, q. 93, art. 3 ad 3, etc.

[1] *Summa*, 1, 2, q. 72, art. 4 c.

— Corollary. Barbarians are not accustomed to scrutinize such things. Wherefore, in regions of the missions, the poor natives, although they are formally and explicitly ignorant of God as orderer and legislator, nevertheless, while they do what they judge to be good, are not incapable of merit before God (grace being supposed); and by acting against conscience they must be judged to sin theologically.

Summary

— 1. By a usage already ancient, sin says a human act deformed from its rule; and it is a morally evil act, with this observation, however, that there is no generic notion of morality which indifferently becomes good or evil, but only a confused and analogical notion is proposed, as of being. The notion of sin also belongs analogically to mortal and venial.

2. Since evil is always sought under the aspect of good or as joined with some good, evil in morals does not say pure privation, but is some good joined to the privation of another good. And the moral specification of sin is made, rather than by the joined privation, by the objects to which the sinner turns himself, since on that side the act is voluntary of itself.

3. Sins are distinguished into deliberate and surreptitious; committed in duties toward God, toward oneself, toward one's neighbor; of malice, of infirmity, of ignorance; of heart, of mouth,

and of work; of commission or omission; one's own or another's.

4. Sin is properly formal. Material sin supposes a person subject to law, who acts freely, and with a certain good faith does an act or omission prohibited by law.
5. Sin is always done dependently on the will; but it can be present in any power which is a principle of acts.
6. Philosophical sin exists neither objectively, since by divine law every moral evil is forbidden, nor even subjectively, since conscience of absolute obligation brings with it a confused notion of God the legislator. Hence even barbarians are capable of merit (with divine grace) and of theological demerit.

Chapter II: On Mortal Sin, or on Sin Properly So Called

Order of speaking. First we shall treat of actual sin, then of habitual sin, then briefly of the guilt of fault and punishment.

I. - On Actual Mortal Sin

In order we shall hand down its notion and demonstration; its psychological explanation; its definition and conditions. Then we shall complete the doctrine with various considerations concerning sin of omission, concerning the unequal gravity of sins, even mortal ones, and concerning the physical order to which sin pertains.

— I. Notion and demonstration of mortal sin. Sin is called mortal insofar as it closes the way to eternal life for the sinner.

That there are sins of this sort is made clear splendidly from Sacred Scripture itself. The goats who, in the solemn judgment, will be placed on the left of the Judge, who as cursed will depart into eternal fire, are certainly guilty of mortal sin [1]. Judas committed mortal sin, concerning whom the Lord says: "Woe to that man by whom the Son of Man shall be betrayed" (2). When pagan iniquities have been enumerated, St. Paul directly pronounces worthy of death those who do such things: "and not only those who do them, but also those who consent to those doing them" (3). "Neither fornicators, nor servants of idols, nor adulterers, etc. shall possess the kingdom of God" (4). "Sin," says St. James (5), "when it is consummated, generates death."

The testimonies of tradition are also most open, so that there is no need to linger in alleging the Fathers. Innocent III (6) says without hesitation: "The actual punishment of sin is the perpetual torment of Gehenna." Two ecumenical councils, Lyons II and Florence, have these words: "The souls of those who depart in actual mortal sin, or with original sin alone, immediately descend into hell, yet to be punished with unequal punishments (7)." Between each council, Benedict XII, Constitution of January 29, 1336: "We define that according to the common ordination of God, the souls of those departing in actual mortal sin, immediately after their death descend to hell, where they are tormented by infernal punishments" (Denz. 531).

St. Thomas elegantly proposes the reason in this way: "Wherever there is some due order to an end, it is necessary that that order lead to the end; but departure from the order excludes the end; for those things which are from the end receive necessity from the end, namely that they must be, if the end ought to follow, and with those things existing without impediment, the end follows. But God has imposed on the acts of men some order in respect to the end of good, as is clear from the things said above. Therefore it is necessary that, if that order has been rightly placed, those proceeding through that order obtain the end of good, which is to be rewarded; but those departing from that order through sin be excluded from the end of good, which is to be punished" (*C. Gent.* III, c. 140). Since the Holy Doctor treats in that place of punishment in general, it must be completed by the following, where, treating of the punishment due to mortal and venial sin, he has these words: "Man through works of virtues, in which chiefly there is the intention of the due end, attains his ultimate

end, which is happiness. If therefore he acts in something against virtue, turned away from the intention of the ultimate end, it is fitting that he be deprived of the ultimate end" (*C. G.* III, c. 143).

[1] St. Matt. 25, 31-46. - (2) St. Matt. 26, 21; and St. Mark 14, 21. - (3) Rom. 1, 32. - (4) 1 Cor. 6, 9-10. And he repeats the same, to Gal. 5, 19-21. - (5) Jas. 1, 15. - (6) Denz. n. 410. - (7) Denz. 464 and 603.

— II. Psychological explanation. If we contemplated God in himself and the rest in God, we should see, by clear intuition, that our happiness cannot be separated from the observed moral order or law of God; and that by one and the same way one arrives at God, at Good, at Beatitude. But now that immediate evidence is lacking to us; and mediate evidence is not so strong or stable that it prevents every deception. Therefore it happens that a certain enjoyment contrary to that order or to that law seems to be appetible, an element of beatitude, and can be proposed to us as to be chosen here and now, as better for us than the preserved order itself. Yet at the same time we are conscious of the permanent necessity or obligation, whatever detriment must be borne, of remaining in the moral order, of choosing nothing which is contrary to honorable good. Therefore the opposite election is demonstrated to contain rejection of honorable good, and, as much as lies on the part of the one choosing, renunciation of the ultimate end or God, to whom the preserved order is related as a necessary means.

Therefore in him who follows the practical judgment of choosing in favor of an enjoyment contrary to the order of honesty, there appears error and imprudence of judgment, malice of the will which embraces it, practical desertion of the way which leads to eternal life, offense of God, who guards the moral order; so that the man sinning at the same time errs, sins, dies spiritually, and turns himself away from God.

Nevertheless, in the present order, since a good relation to God is preserved in habitual grace, which is formally our supernatural life, the spiritual death of the soul says the removal of grace, which God alone can infuse and withdraw. But from the man abusing his liberty and turning himself badly to creatures, God in very truth removes grace, and man spiritually dies.

— III. Definition. By this very explanation, this twofold definition of sin is proved true: one of which is taken from the side of voluntariness or conversion to commutable good, that is, changeable because finite; the other from the side of incommutable good (God):

"Something done or said or desired against the eternal law" [1].

A turning away from God, the ultimate end, through voluntary conversion to commutable good.

By the former reason, that which is voluntary of itself is considered directly; by the latter, that which is evil of itself. And because it concerns an act of the will, the use of the former definition is more important [2].

In this former definition, the words "against the law of God" imply that aversion from God from which the other definition takes its beginning.

Nor can it be objected against the definitions that they suppose an act, whereas sin is also committed by omission. For we conceive omission after the manner of a being, and the omission thus conceived is proposed to the will as an object which can agree with the law or plainly repugn the law. "Just as acting is imputed to a man unto sin because it is opposed to a negative precept of law, so also not

acting itself, because it is opposed to an affirmative precept" (St. Thomas, *De malo*, q. 2, art. 1 c. Cf. the things already said concerning human acts).

[1] St. Augustine, *Contra Faustum*, l. 22, c. 27 (P. L. 42, 413).

[2] Cf. *Summa*, 1, 2, q. 72, art. 6.

— IV. Conditions of mortal sin. In order that mortal sin be committed, it is required and suffices that with advertence to malice, to malice which at least confusedly is apprehended as grave, there be joined consent perfectly free, with that intrinsic perfection which leaves the unencumbered use of the higher faculties. Cf. things said above, n. 41.

But the malice which is apprehended as grave can be either that of the transgression itself, which is known in itself to be grave, or that of imprudence, omitting due inquiry in a grave matter.

A doubt concerning grave sin committed will generally have to be solved from presumptions. This presumption is drawn from the habitual disposition of the agent and from the object, which at first sight appears light or notable.

Concerning each element, that is, concerning the object of the act, which is as it were the matter, and concerning consent, by which the sin is informed, and which depends, in a sane and wakeful man, on advertence, it seems that one must speak separately.

— On grave matter. 1. With respect to gravity, they distinguish matter grave from its whole genus, where none can be judged small, because the notion of grave disorder is found in the whole genus: blasphemy, venereal delight; and matter grave from its genus, in whose genus, grave of itself, grave malice can be absent because of the slightness of the matter. Finally there is matter light from its genus: this does not become grave unless a circumstance is added which changes the species.

2. Whence will grave matter be recognized? Let us distinguish internal criteria from external:

a) Concerning internal criteria. That by which matter is ultimately or formally constituted grave is the will of God commanding or prohibiting under grave obligation. But because the most wise God bears a will adapted to the essences of things, thence it is permitted to us to attempt a more intimate exploration. And the precepts of natural law are to be discerned from positive precepts. With respect to natural law (which we take as its precepts are now the object of supernatural observance), the criterion is offered to us by the very order of things. For if the observance of the essential order is a connatural condition of eternal life, every substantial violation of that order will be grave matter. But there is a threefold essential order to be observed by us: order toward God, order toward neighbor, order in ourselves.

Our order toward God is one of subjection; toward neighbor, it is one of equality, by which we are forbidden to violate his person either in himself or in his things, and of proximity, by which he must be loved by us as "another I." In ourselves order demands that, content with useful dominion of our person and of our faculties, we make no act of perfect dominion over them, but that in ourselves we venerate God, parents, and fatherland as our authors. Hence we cannot pervert the subordination of our faculties. Whatever, therefore, cannot be composed with that order thus explained, but either simply denies it or is opposed to it by so great a relation of contrariety, will be the object of grave sin.

Hence, in the order toward God, the violation will be substantial which is not only about the mode of honoring, of worshiping God (as voluntary distraction in prayer), but denies God, or his attribute, or worship itself, at least by a transient act. Wherefore there is no slightness of matter in sins directly against God or a divine attribute, for example, in those which are directly opposed to the theological virtues: heresy, despair, hatred of God; nor in blasphemy, in an assertory oath, superstition, simony of natural right.

In the order toward neighbor, substantial will be every violation which is notably harmful to the neighbor in a matter of which he is not master, or which induces a just and grave offense of him.

In the order toward the agent himself, substantial will be every direct disposal of himself or of his faculty, since these are opposed to the divine dominion of our person. This usurpation can be committed by physical destruction of oneself (suicide) or of a faculty (mutilation), or by moral abuse through acts which are against the order of the whole faculty. Since this abuse is present in every venereal delight directly sought outside marriage, therefore in that luxury there is not given light matter.

N.B. The customary words "grave matter" suggest a quantitative estimation, which, when natural law is being treated, is never formal, nor can it always be applied. For even in commutative justice itself, where, when external things are treated, quantity is truly considered, theft nevertheless is not grave precisely because it is of such a quantity, but because, on account of such a quantity, the neighbor is judged reasonably and gravely unwilling, so that the order toward him is substantially violated. But in the matter of chastity, that quantitative consideration has caused many to experience such difficulty in admitting the gravity of every lustful lewdness outside marriage, indeed of every fornication; it was also the cause why they fled to extrinsic reasons of danger of hallucination and abuse. But then the malice does not seem now intrinsic, which nevertheless is demanded by reason of the violation of nature. And that extrinsic reason is laboriously demonstrated to be universal.

Because the end of every law is charity, this other form also is proved: "Mortal from its genus is that which of itself harms the charity of God, or of neighbor with respect to persons, things, or rights, or gravely corrupts ourselves" [1].

When positive law is being treated, this imposes an order not essential of itself, whose observance therefore is less immediately joined with the end of man. Wherefore here the consideration of the moment of the end and of the relation of the thing to that end becomes more formal. This is especially true of human law. In order that this law can obligate gravely, it is required that the law contribute notably to the common good, and that its violation notably harm that end, at least if it were multiplied. For a law can impede that multiplication by a grave prohibition.

The things thus far explained will be illustrated and completed by notions concerning venial sin.

b) Concerning external criteria. Although the principle of distinguishing mortal sin from venial, taken from contrariety to the orders of charity [2], is not hidden from man, nevertheless it surpasses human art, as if from the intrinsic nature, to define concerning individual sins whether they are mortal or venial, so that St. Augustine confesses that he had labored in vain to discern all grave sins from light ones [3]. And St. Thomas: "Every question in which mortal sin is being asked about, unless expressed truth is had, is determined dangerously" [4]. Therefore St. Augustine advised this: "Let us not bring deceitful scales, on which we weigh what we will and how we will, saying according to our

own judgment: this is grave, this is light; but let us bring the divine scale from the holy Scriptures, as from the treasuries of the Lord, and on it weigh what is graver; indeed let us not weigh it, but recognize things weighed by the Lord" (*De baptismo*, l. 2, c. 6, n. 9. P. L. 43, 132).

Furthermore, the positive will of God must be viewed, which certainly in many matters, through a precept made for a grave end, can as it were complete the gravity of the matter. Hence also Augustine: "There are some things which would be thought very light, unless they were shown in the Scriptures to be grave beyond opinion" (*Enchir.* c. 79. P. L. 40, 270).

Wherefore a threefold criterion of distinction is customarily handed down: Sacred Scripture, which is judged to condemn an action as mortal when it declares it "to be worthy of death," or "to exclude from the kingdom," or "to be execrable and abominable," or marks it with similar words. (Cf. Suarez, ad 1, 2, Tr. 5, Disp. 2, s. 5, n. 19.) - The accepted opinion of the Fathers and Doctors, for in a moral matter authority is of very great value. - The judgment of reason, according to the things which we have just said.

But in the absence of certain proof, matter is not to be pronounced grave. St. Raymond had already warned: "One thing I counsel, that you not be too prone to judge mortal sins, where it is not established for you by certain Scripture... otherwise men could be induced into despair [1]."

But St. Alphonsus confirms by authorities and reasons the danger of rash condemnation: for those men whom you easily condemn of mortal sin in actions in which grave malice does not appear to evident reason, those same men you make exposed to the danger of eternal damnation.

[1] Busembaum from Azor, p. 1, l. 1, c. 9; and Sanchez, *Decal.*, L. 1, c. 1, n. 4. And cf. St. Thomas, 1, 2, q. 88, art. 2.

[2] Cf. the *Summa*, 1, 2, q. 88, art. 2 c.

[3] "What are those very sins which so impede arrival at the kingdom of God that nevertheless they obtain indulgence by the merits of the saints, is most difficult to find, most dangerous to define. I certainly, up to this time, although I have labored about this matter, have not been able to arrive at the investigation of them." (*Civ. Dei*, L. 21, c. 27, n. 5. P. L. 41, 750. Cf. also *Enchiridion*, c. 73.)

[4] *Quodlibet* 9, art. 16.

[1] *Summa*, L. 3, *De Poenitentia et remissione*, § 21.

— On advertence. Actual advertence to malice is required. It does not suffice that a man could and ought to have adverted. But he who, conscious, has omitted the obligation of adverting, then, in the cause, becomes guilty of the evil effects which he foresaw at least confusedly.

It is not required, however, that advertence endure as long as the sinful action endures, but it is enough that it was present at the beginning of the action, indeed before it was begun, when the sinner willed to begin and complete it: as one who proposes to drink until drunkenness, or to take that quantity from which he knows drunkenness will follow. Nor is distinct advertence to malice demanded, but consciousness of a gravely evil thing in the confused sense suffices. Nor must there be explicit attention to God's offense, since philosophical sin is not given. And reflex attention is not required; direct cognition which is drawn from habitual knowledge suffices. Nevertheless perfect apprehension of substantial malice is necessary; but concerning a special circumstance habitually known it is said to be enough that it be present to the intellect in a subconscious or confused way.

Here there is need of a certain discretion. Of itself (with a special reason set aside) it will not be admitted that one sinning lustfully did not advert to a vow of chastity, the memory of which so many occasions renew; but forgetfulness of a vow of abstinence will be admitted in him who, among companions, takes a drink offered. A talkative woman can, without advertence, gravely detract from her neighbor; yet if she has been taught by experience itself or by the command of a confessor concerning the necessity of greater attention, she will be excused with more difficulty.

— Various Complements. 1. Concerning sin of omission. The will can be borne to omission in two ways. For the omission itself can please the sinner as flight from a distasteful thing: as if assistance at Mass generates weariness for him; and it can happen that nothing in the omission as such pleases him: as if he quite gladly hears Mass; and then the will is directly borne to that by which the due act is impeded, for example, to a game on account of which he omits Mass [1]. That positive act, which is the impulsive cause of the sin of omission, nevertheless stands outside its essence. Wherefore it does not specify the sin, which consists in the very cessation from the due act. Nevertheless there is had an inordinate affection on account of which one wills to omit the sacred service. Wherefore, if one neglects the sacred service in order to study, he sins gravely by omission against religion; and besides he is infected by the venial vice of curiosity. Cf. Suarez, *Rel.*, Tr. 5, d. 2, c. 13, n. 4. Therefore the species of the grave sin has not on that account been changed.

[1] St. Thomas, 1, 2, q. 71, art. 5.

— II. The unequal gravity of sins, even mortal ones. That unequal gravity is demonstrated by Scripture itself, and indeed from the mouth of the Lord, where he indicated that the sin of the betrayer was greater than the sin of Pilate.

And it is proved by reason. For mortal sin also is specified by the object; and the object can be opposed to the moral order or law of God in various degree.

The gravest of all is hatred of God, which directly repugns charity; sin which is committed immediately against God, such as infidelity and blasphemy, is graver than sin of the same notion committed against man; sin concerning the substance of man, such as homicide, is graver than sin concerning external things, such as theft. (Cf. 1, 2, q. 73, art. 1 and 2.)

— Sin is in the natural order. III. When good was being treated, we distinguished natural and supernatural goodness at least by reason. An act in which natural goodness is present does not thereby yet participate supernatural perfection. But concerning actual sin the same distinction does not hold. For God is offended, not precisely insofar as he is author of supernatural life, but insofar as, author and lord of nature, he has bound us by his precepts, among which surely this greatest is found, that we intend the supernatural end. Nor can we turn ourselves away from the supernatural end without at the same time turning ourselves away from the natural end, which is as it were absorbed by the former. Nor can a distinction be taken from the elicitive principle (natural or supernatural), since to sin is in our power and we always complete sin by our own powers alone.

That we may repeat the same in a few words: every mortal sin is ascribed to natural disorders, both because man sins by natural powers, and because, by sinning mortally, man turns himself away simply from God the ultimate end, and not only from God the author of beatitude.

II. - On Habitual Mortal Sin and on the Stain of Sin

— 1. From the school of dogma we assume, as demonstrated by Scripture and tradition, that beyond actual sin there is habitual sin; faith itself hands down an example of this in original sin.

Besides, even among equal men, after a grave offense there endures a certain state of mutual enmity, in which, not only the offended one, which is clear of itself, but, what seems wonderful at first sight, the offender himself remains turned away from the person toward whom he was injurious. And in a similar way, committed sin morally perseveres until reconciliation, or at least until penance. That perseverance of sin formally constitutes the state of sin, or habitual sin, the guilt of fault [1]. It would have existed in every order of the world, even a natural one. But in the present order, after mortal sin, it materially consists in the privation of sanctifying grace (insofar as it connotes the will by which one voluntarily turns himself away from God), nor does it cease except through the restitution of that same grace.

2. But because that grace is at the same time the beauty of the soul, its privation infects the soul with a stain. Wherefore Scripture itself exhibits sinners as polluted, unclean, befouled with filth to be washed away [2]. Therefore the stain is distinguished from habitual sin only by reason.

[1] Guilt here is taken for the state of imputation.

[2] Cf. Job 33, 9; Prov. 21, 8; Gospel of St. John 13, 10; Is. 4, 4; Zach. 13, 1; Acts 22, 16; 1 Cor. 6, 11.

III. - On the Guilt of Punishment

— I. That permanent guilt of fault is the proximate title of punishment to be undergone. Therefore this is owed as long as that guilt remains.

From the dogmatic exploration of mortal sin we know that mortal sin is of itself irreparable: for no principle of reparation, by which he may restore charity and grace to himself, remains in the man who has sinned mortally.

II. Furthermore, to aversion from God, infinite good, there remains for the sinner the infinite and perpetual punishment of loss, or of privation of the beatific vision. The punishment of sense is owed properly because of the disorder of conversion to creatures. On this side, sin is finite, and could, considered in itself, be expiated by a finite and temporal punishment of sense. But because of the eternal guilt of fault, it happens that the punishment of sense itself will endure eternally. This human explanation is attempted concerning a thing which has been revealed to us by God.

But, according to the positions of St. Thomas, for the same reason, because the remission of venial fault or the payment of debt is not conceived in a permanent state of enmity, eternal punishment is inflicted on the damned also for venial sins and for mortal sins whose fault indeed had been removed but whose expiation had remained imperfect. Several other theologians do not admit this.

Observe finally that the proximate cause of eternal damnation is not sought by St. Thomas from the infinity of sin (which subjectively is none), but from the necessity, mysterious enough to us, by which the separated soul cannot change counsels without a miracle, but rather perseveres impenitent in its voluntary aversion from God.

Summary

— I. Notion and demonstration of mortal sin. From Scripture and Tradition we know that there are mortal sins, that is, sins which close the way of eternal beatitude. This is confirmed by reason. For when the order to the end has been established, once it is substantially vitiated, the attainment of the end ought to become impossible.

II. Mortal sin is explained psychologically by this, that, deprived of immediate vision of the indivisible bond by which our happiness is joined to the moral order observed, a certain enjoyment outside God and against his law is at the same time proposed to us as appetible and nevertheless forbidden to us. Hence man can choose in favor of that enjoyment, but by rejecting honorable good and renouncing the ultimate end or God, so that at the same time he errs, sins, spiritually dies, and turns himself away from God. Yet that aversion, in the present order, is not consummated except through withdrawn sanctifying grace, which God alone can take away.

III. As it is voluntary of itself, sin is defined: something done or said or desired against the eternal law; as it is evil of itself: a turning away from God, the ultimate end, through voluntary conversion to commutable good.

IV. The conditions of mortal sin are: that with advertence to malice apprehended at least confusedly as grave, there be joined intrinsically perfect consent. Doubts will have to be solved from presumption.

1. Matter is distinguished as grave from its whole genus or from its genus: the latter admits excuse of slight matter. An object light from its genus does not become grave unless a circumstance is added which changes the species.

But matter is grave formally insofar as, when natural law is being treated, the order of essences is substantially violated, whether toward God, toward neighbor, or in ourselves; or, when positive law is being treated, insofar as the end of the law is of grave moment, and its violation notably harms that end, at least if it becomes frequent.

In the present order, that also can be called grave which of itself harms the charity of God or of neighbor, or is contrary to right love of ourselves.

Nevertheless, to recognize mortal sins, we need external criteria of Sacred Scripture, Tradition, and even human authority.

2. Actual advertence is demanded, while there remains firm imputation of the evil effects which he at least confusedly foresaw who, conscious, omitted the obligation of adverting. It is not required, however, that advertence endure through the whole action; nor is distinct or explicit attention to God's offense demanded; nevertheless apprehension of substantial malice is demanded; and it must prudently be weighed whether a circumstance habitually known actually could have been unattended or not.

V. Various Complements. 1. Omission can be directly willed, or only indirectly, because of affection for a thing which cannot be composed with the action. Nevertheless the sin of omission is not specified by that affection. Wherefore not rarely, with a grave sin of omission, there is joined a venial sin of inordinate affection for the thing on account of which the omission was voluntary.

2. Because they are specified by the object, which can be opposed to the law of God unequally, mortal sins, as Scripture itself testifies, are of unequal gravity.
3. But all sins are of the physical natural order, because we sin by our own powers, and through every mortal sin we turn ourselves away from God, author of nature.

VI. After mortal sin there remains guilt of an offense of God, by which habitual sin, or guilt of sin, is formally constituted. This same guilt now materially consists in the privation of sanctifying grace.

Since that grace is at the same time the beauty of the soul, its privation stains the soul. That stain is distinct from habitual sin only by reason.

VII. Guilt of fault is the proximate title of punishment to be undergone. To aversion from God is owed punishment of loss; to inordinate conversion to a creature, punishment of sense. This latter of itself would be temporal, unless the persevering state of enmity stood in the way of its extinction. Which, according to St. Thomas, is also applied to the punishments which the damned must undergo because of venial faults and forgiven mortal sins.

The proximate cause of the eternity of the punishments of hell is in the immutable obstinacy of the separated soul in its voluntary aversion from God.

Chapter III: On Venial Sin

It will chiefly be necessary to treat of actual sin; for only a few things must be added concerning habitual sin.

I. - On Actual Venial Sin

Order of speaking. First we shall confirm that there are venial sins. There will follow a psychological analysis and definition of venial sin, with certain explanations added concerning the analogy and the evil of this sin. Then we shall give criteria of venial sin; then concerning the modes by which acts venial of themselves can become mortal. And, by way of complement, two cases will be solved.

— There are venial sins. We call venial sin a sin which, as it is committed, does not constitute man turned away from God, or an enemy of God, nor is worthy of eternal punishment, but is of itself remissible.

But that there are such sins must be held by faith, from the Council of Milevis, c. 7; Trent, s. VI, c. 11 and 12, and can. 23, 25; and s. XIV, c. 5 and can. 7.

And it is certain that there are also sins which are such by their nature, and not merely from the mercy of God, who would punish beneath the merit of the cause.

But this third question is disputed among theologians: whether or not God, by supplying sufficient helps, could have prohibited all deliberate disorders under mortal guilt.

— Psychological explanation and definition.

I. In our present condition, just as indeliberate movements anticipate the use of reason, so also it happens that we have semi-deliberate acts, or acts not fully human, concerning which we spoke in the treatise on human acts. But it repugns human nature itself that man should be judged to have determined concerning his end by a semi-deliberate act. Therefore, already on account of this cause, we make acts short of aversion from God or from the ultimate end, which nevertheless are disordered.

Furthermore, even deliberately a weak man can, while he practically acknowledges and reveres God the ultimate end, act as if inconsequently in those things which, because they are not according to the order of reason, cannot be referred to God; and nevertheless, because they allow charity toward God and the threefold order (toward God, toward neighbor, in oneself) to be substantially untouched, they do not bring about aversion of the agent himself from God. Therefore the agent remains turned toward God, but his action is referred neither to God nor to another end simply and positively ultimate. Hence again there are had disordered acts without aversion from God.

II. And this is venial sin, which therefore can be defined: a voluntary disorder concerning a creature, without aversion from God. And at once it is also seen to be of twofold notion, since sin can be venial because of the imperfection of the act and because of the lightness of the object.

Sin which because of the very notion of the matter is venial, is such from its genus. Wherefore, when we are moving in a mortal genus of sin, yet in such a way that smallness of matter excuses from grave

guilt, the cause of excuse is rather the imperfection of the act than the lightness of the object. That is, injury to another man is grave from its genus. But the small quantity which is taken away secretly, the small insult or detraction which is committed, cause the injury reasonably not to be judged perfect. Therefore the very quality of the action has been changed because of the modest measure of the thing. Therefore observe that the excuse is not formally quantitative but qualitative.

— Analogy of venial sin. Venial sin signifies another disorder, offense, and punishment than mortal sin; and therefore it is sin only analogically. It signifies another disorder, since it removes no essential order, so that it repugns God the ultimate end neither immediately nor mediately. It signifies another offense: for it does not constitute God an enemy; nor does one sinning venially prefer a creature to God, but only fixes for his will an immediate term diverse from the term which, God willing, it ought to have. Yet the command of God is not urged in the case under threat of enmity. It signifies another punishment, that is, a temporal one.

Wishing to express this, St. Thomas says that venial sin is not against the law but beside the law; but Scotus says that venial sin is opposed to counsel, not to precept. Scotus seems by the name of counsel to understand a norm whose observance is not necessary for salvation. St. Thomas, however, by his manner of speaking avoided every opposition with the definition by which St. Augustine defined mortal sin as something done against the law. In itself, the words can be explained in this way. If you consider the law of God all at once and as a whole, as the ordination by which man is directed to his end, venial sin, since it is not done according to an opposite direction, cannot be called contrary to it (cf. Cajetan in this place), but at the same time it is not according to the law; wherefore it is said to be beside the law: the sin is in the very mode of observing the law. St. Thomas himself explains his mind thus: "Venial sin is so called according to an imperfect notion and in order to mortal sin, just as accident is called being in order to substance, according to an imperfect notion of being; for it is not against the law, because one sinning venially does not do what the law prohibits, nor omit that to which the law obligates by precept; but he acts beside the law, because he does not observe the mode of reason which the law intends" (1, 2, q. 87, art. 1 ad 1). Hence the things we said above, n. 404 and 413, are confirmed.

— The evil of venial sin. Nevertheless venial sin is held in hatred by God, as something which repugns his infinite goodness; and, as long as it is not removed, it impedes the sight of God. It is an evil which, in its own order, transcends every physical evil, so that it cannot be committed for avoiding any punishment. It is opposed to the fervor of charity, because a man in whom charity perfectly dominates will do nothing which is not referred to the beloved God.

— The subject of venial sin. Venial sin, since it says an election not in agreement with the intention of the higher appetite, demonstrates an imperfect subordination of the lower appetite to higher reason. In innocent man, movements little deliberated would not have existed; and all things consequently would have been composed according to the deliberation of higher reason. Wherefore man, in the state of preternatural integrity, could not have sinned venially. Similarly the Blessed Virgin, because of the moral gift of integrity, must be said to be immune from venial stain. Where there is no discursive process, but all things are apprehended and sought in the principles themselves, venial sin cannot exist. For only a discursive process permits something to be proposed as good without order to the intended end simply ultimate. Therefore, not because light matter was

lacking, but because of the angelic perfection of nature, an angel could not sin venially (St. Thomas, 1, 2, q. 89, art. 3 and 4).

— Criteria of venial sin. Let us distinguish venial sins which can be such although they are deliberate, from actions which are not venial except because of imperfect deliberation.

1. According to the things which we explained above, n. 413, deliberate venial actions will be violations of order which we can call accidental, because they allow the order of essences to be substantially untouched, or because they are opposed to positive law only in a light matter.

Those accidental violations of the essential order will be, in our relation of subjection to God, various negligences in fulfilling duties of religion which neither arise from formal contempt nor are so notable that they contain virtual contempt; in our relation to neighbor, they will be faults which harm him little, and do not reasonably remove the notion of friendship. Observe that these acts turn upon a thing which from its genus is grave, so that they are not light except because they are objectively imperfect.

In ourselves, on the contrary, there also occur acts venial from their genus: dissipations of things of which we have perfect dominion, which will not become grave unless for that reason a grave duty now cannot be fulfilled; so also useless and vain concupiscence (not however in a venereal matter), vain enjoyment, curiosity, superfluity of adornment and dress, trifles, idleness, excess in food, drink, sleep, use of marriage, fear, sadness, appetite of money, praise, etc. So also lies. For whether you consider the harm of error and of deception of the neighbor concerning my mind, since it concerns contingent truth, it is light by its nature; or whether you consider the denied communication of my mind, this of itself was not due; or whether you consider the abuse of the faculty of speech, since speech is immediately ordered to the good of the speaker, a lie does not break through the immediate order of the whole faculty, but badly refers to the good of the speaker the act or use of a faculty which is immediately ordered to that good; whereas in the abuse of the venereal faculty outside marriage, the sinner uses, against the immediate end of the faculty, for his own satisfaction, a faculty which is immediately for the good of the species; or finally whether you consider the social effect of lying, circumscribed by the false communication of my mind, which is not necessary, even by frequent falsity of this sort mutual communication and mutual trust are not notably harmed.

Yet the things said return concerning the necessity of recurring to external criteria.

2. Criteria of imperfect deliberation or imperfect consent.

Those criteria are taken: a) from presumption: if one is accustomed to be so disposed that he would rather die than expressly sin mortally; b) from the conscience of the agent: if, from habitual disposition, you judge that you would not have done it if you had fully apprehended the matter; if a God-fearing man doubts concerning his assent; if the spontaneous sentence immediately was "I did not consent"; c) from the state in which the agent was: he was half-asleep, very distracted, agitated by vehement passion, disturbed; d) from the mode of action: it was done with a very timid and as it were perplexed mind; while you wished to deliberate, the words had already slipped out of your mouth, the thing had already been done; e) from the incomplete action: he who could conveniently have executed the sin (for example, solitary sin), notwithstanding temptation, did not execute it. A

certain distraction easily happens in fantasies less chaste, in detractions, and especially in sins in the cause, where effects, harms, dangers of others, fled the mind. "Recall here forgetfulnesses, ignorances lightly culpable, erroneous consciences from light negligence" (Ball.-Palm. I, tr. 4, n. 685).

Therefore let the confessor prudently ask the penitent, according to his capacity, whether he acted fully awake, whether after observing the malice of the thing he elicited no act against the temptation; but once the response "I remain doubtful," "I do not know," has been received, he will not insist too much, lest he become troublesome, but let him recur to presumptions; nor rarely will he have to commit the matter to the divine judgment (Genicot, I, 161).

— Passage to mortal sin. On the contrary, they say that venial sin or even an indifferent act passes into mortal, because of the depraved affection of the will or the effect of the action, by reason of the ultimate end, of an adjoined end, of contempt, scandal, danger, accumulated matter. With what truth these things are said will appear after an examination has been made.

1. By reason of the ultimate end: if one fosters affection for a venial or even indifferent thing (say a game, a person), not only intense but such that actually or virtually he would rather violate a grave precept than be deprived of those things.

Observe that habitual disposition according to itself does not suffice, because that to the committing of which he is prepared by habit alone is not imputed as anyone's fault. Otherwise, how many would actually sin who are so disposed that for a small cause they would neglect duties, commit shameful things!

If that affection betrays itself in grave guilt of commission or omission of which it was the occasion, it will be enough to accuse that grave guilt. If in no guilt, the sin is by affection alone.

2. By reason of an adjoined end: as if one lies lightly in order to extort copulation. Again, however, not the lie itself, which remains light in itself, but only the desire or contrivance of fornication must be accused.
3. By reason of absolute and formal contempt, whether of the Superior or of the precept as such: as if you refuse to be subject to the precept or to the Superior, which is the sin of consummated pride; if you are unwilling to do it because it is prescribed, which is the sin of formal disobedience: both gravely repugn the charity due to the Superior.

But contempt according to some respect is not grave of itself, when, the authority being admitted, one contemns only execution; when one habitually indeed wishes to be subject, but here and now in a small matter shakes off the yoke; when one contemns the Superior merely as unlearned, imprudent, imperfect; nor interpretative contempt, when the precept is violated because of another cause: anger, a depraved custom. And if the matter which gave occasion to contempt is light, contempt alone must be confessed.

4. By reason of scandal: if you cause a mortal ruin of the neighbor. Only the superadded malice, which is gravely opposed to charity, must be manifested in confession.
5. By reason of danger of falling into mortal sin, if proximate danger of grave sin is induced. The notion of proximate danger will be explained below, where the flight of sin is treated. In

venereal matter, interior or exterior sensualities, venial according to themselves, can produce such danger.

6. By reason of accumulated matter. For if several small matters are morally joined, all are morally reputed as one, and grave matter arises. But they can be joined according to themselves, or according to the effects produced. According to themselves, as if you often steal a little and do not restore; if by intervals you omit several psalms of the same office; if on the same day of fast you eat a little rather often. But he does not sin gravely who on diverse feast days has worked a little, who daily in Lent has eaten a little or has determined to eat: these are not morally united among themselves. Nor does he sin gravely who on diverse days has violated a vow of praying a little something every day, or of giving a small alms. It would have to be answered otherwise if by small daily distributions he had wished to fulfill the execution of a vow of a great sum to be given. Nor are several vows which are to be fulfilled on the same day united among themselves. Hence he who, on one day, has violated one hundred vows of light matter, has not for that reason sinned gravely. - According to effect, as if, by repeated detractions, you render a person utterly hated.

— You ask whether or not matter, grave in itself, can become light, considered as a small part of a sum or of a total quantity.

This can indeed happen, but the cases must be prudently weighed. In the first place it is necessary that it concern a thing which is estimated quantitatively, as money, as prayers to be said. Furthermore, it is necessary that this matter belong as a part to the whole or to a certain universality. Hence, he who has vowed 100,000 is not judged, with one hundred notes omitted, to have sinned gravely against the vow or promise. In dividing a large patrimony, the largeness will cause things notable in themselves to be judged light by a certain tacit consent. Lehmkuhl, II, 269, thinks the same can be said of the omission of one Mass from one hundred owed for the same intention; but others do not admit this. Nor in strictly commutative contracts, as buying, selling, borrowing, do they concede that he who does not pay a sum grave in itself is excused from grave sin.

Observe that, in contracts concerning Masses, when one Mass is being treated, the obligation of paying one stipend is not grave, while grave is the obligation of celebration to which such a stipend is joined.

— What is called the will of committing all venial sins practically signifies nothing except a general remissness in avoiding venial sins. Remissness of this sort, negligence, although dangerous and very harmful in itself, for the most part is only venial, because toward mortal sin "it is only a remote disposition, unless some peculiar circumstances come upon it, which in some matter consummate a proximate occasion." Suarez, *De Relig.*, tr. 8, l. 1, c. 4. So also Lugo, *Paen.* d. 16, n. 50; St. Alphonsus 4, 12 (as more probable), against Sanchez, *In Decal.* I, 5, 4.

— Deliberation concerning committing a mortal sin will be mortal, if it has been perfect, that is, if, fully adverting to the grave malice of the proposed act, you deliberately choose to remain wavering: for then you virtually judge that it can happen that a created good is reasonably preferred to divine friendship. But often it is only a certain negligence in expelling contrary thoughts and affections, which is venial. Lehmkuhl I, n. 347, 5.

II. - On Habitual Venial Sin

— Venial sin itself perseveres morally until it is retracted. Wherefore there is also habitual venial sin. But in a just man there remains the principle of charity by which venial fault can be repaired; and habitual venial fault is contained by no real privation. Certainly, repeated venial acts easily generate a certain difficulty of acting perfectly; but that difficulty, which remains after the fault has been destroyed, is a certain punishment concomitant to sin, but constitutes no habitual sin. Moreover no stain properly so called follows venial sin. For venial sin indeed impedes the splendor which the soul obtains from acts of virtues; but, since it removes or diminishes no infused habit, and since stain signifies a habitual rather than an actual detriment, the soul is stained by venial sin only according to some respect, not properly.

Summary

— I. From the definition of the Councils, it must be held by faith that there are venial sins, which, as they are committed, do not constitute man an enemy of God, but are remissible. And it is certain that such sins are such by their nature, and not from the mere mercy of God. But it is disputed whether or not God could by positive will have made all disorders mortal. Venial sins are explained psychologically, both because we have semi-deliberate acts, and because we can deliberately act not consequentially to our preserved voluntary ordination toward God, the ultimate end, in things which allow the substance of the order to be untouched.

Therefore venial sin is a voluntary disorder concerning a creature, without aversion from God. That which because of the notion of the matter is venial is such from its genus. Because of imperfection, acts are venial, even in grave matter, when they are semi-deliberate acts, and those which, because of the slight quantity of this matter, are excused from grave sin.

II. Venial sin is analogically sin, since it signifies another disorder and offense than mortal sin, and brings in another punishment. It is said to be beside the law, not against it, insofar as it is not done according to the direction opposite to the law, that is, to ordination to the end.

III. Yet it is an evil above every physical evil, and is held in hatred by God, and impedes his sight.

IV. The subject is only man, who has a discursive process and imperfectly subject lower powers.

V. The criteria of venial sin will be: 1. Objectively accidental violations of order, concerning the mode of worshiping God and of preserving justice and charity toward neighbor. In acts which are not referred to others, sins venial from their genus are chiefly found, such as lying itself. 2. Signs of imperfect deliberation, to be taken from presumption, from the spontaneous dictate of conscience, from the state of the agent, from the mode of action, and from its incomplete notion.

VI. Venial sin properly does not pass into mortal. But things gravely culpable can come upon it: affection, an extrinsic end, contempt, scandal, danger of mortal sin, and sometimes accumulated matter.

On the contrary, a quantity which, separated, would be grave, can, as a small part of the whole, be held as light. Nor does the will of committing all venial sins seem grave. Deliberation concerning committing mortal sin is not always perfect, and therefore not subjectively mortal.

VII. There is morally habitual venial sin; nevertheless it consists in no real privation; nor is a stain properly so called produced by venial sin.

Chapter IV: On Moral Imperfection

— The abstract notion of imperfection. Imperfection of itself denies further perfection; and therefore, when the moral order is being treated, it denies that perfection in human operation itself, which is the object of moral science.

But it can be merely negative or positive. Negative imperfection signifies a mere defect, a mere lack; positive imperfection, some evil, and therefore some privation or absence of a thing which ought to have been present.

The concrete notion. Moreover, it can be considered from the side of deliberation, or from the side of moral goodness, or of intention or election.

From the side of deliberation, negative imperfection affects indeliberate acts which nevertheless tend objectively toward a good or non-evil thing. For the perfect action of man is a human action, or a deliberate one. Positive imperfection designates disordered movements, whether of the will but first-first, or of other faculties, which the will out of infirmity does not restrain, which it merely suffers: wanderings of the mind in prayer, movements of sensuality. Because the gift of integrity exempted from these, and they betray some tendency into evil, they are positive imperfections: in man, as God created him in justice, they ought not to exist, but they follow original fault.

— Furthermore, according to a sufficiently common opinion today, from the side of goodness, our free elections of an honorable thing, but not of the better thing, to which better thing we are not specially called, are negatively imperfect: for example, by which we do not observe a general counsel contained in Sacred Scripture, or even (according to some) neglect a more remiss inspiration. But positive imperfection is the omission of an act to which one is peculiarly invited, or even (as some will) an act which clearly, all things weighed, is known to be better.

And they are accustomed to add that these positive imperfections, not only from the motive on account of which they are freely admitted, easily become venial sins, but further, according to themselves, dispose one to sinning, and deprive man of greater habitual grace and glory destined for him; indeed that they are causes why God denies more abundant actual graces without which man easily sins, indeed becomes exposed to the danger of losing eternal salvation. They say this of him who, like the young man in the Gospel, specially called to a more perfect state, went away sad. Cf., for example, the things St. Alphonsus has, l. 2, n. 78, or Lehmkuhl I, 662, 663.

But the patrons of another opinion, which today has begun to prevail, remove these latter imperfections from the middle, since they contend that those are venial sins.

These things favor the former opinion: a) sin is not without a precept, and counsel is placed in the option of him to whom it is given [1]; b) in 1 Cor. c. 7, St. Paul, commending virginity, openly declares that he does not sin who chooses matrimony; and c) the Holy Fathers greatly inculcate this freedom of option (2); d) this is added: it pertains to the beauty of the present order, that man even in this matter can imitate God, so that just as divine liberty could create a good but not the best world, so human liberty can choose something honorable indeed, but not more honorable.

The latter opinion can use these arguments. Besides the condition of honesty required in the genus or in the object of an act, our action cannot be honorable unless at the same time it satisfies a certain more general law to which it is subordinated. Now a deliberate neglect of a special divine invitation, or of a good certainly better for the agent himself, cannot satisfy this more general law. For neglect of the benefit of a clear and special divine invitation contains a defect of reverence toward God, of confidence in God, and of ingratitude; and these surely are sinful. Furthermore, since man as a whole is for the end of eternal life, since that end is his proper and intrinsic perfection, how does he not derogate from charity toward himself who has deliberately chosen a lesser eternal glory? It is well understood that by the infinitely perfect Being, to whom no intrinsic good can accrue, so perfect a liberty is possessed that, just as he could abstain from every creation, so also he can choose a world good indeed but not the best; but he who deliberately neglects a certain occasion of greater perfection and beatitude, must he not be called harmful to himself? How could such an election be reasonable? The excuse of excessive difficulty, of an uncertain thing, is removed when there is had a special invitation of God, or when a thing manifestly better for me is present. But if the comparative election of the less good thing cannot be reasonable, it will necessarily be sinful, since God sanctions the whole use of reason. Cf. the laborious evasions of Fr. Lehmkuhl, I, n. 109.

Let this be another form of reasoning. In order that the free will without disorder be able to embrace what it clearly knows to be less perfect, it is necessary that a) it not choose in favor of a lesser intrinsic goodness; b) it not subjectively love the infinite perfection less. God satisfies each condition, for he acquires nothing, he loves all things by loving his own infinite goodness, nor does he love the good less whether he creates nothing, or creates a world good but not best. But in us, when we choose the less good, each condition is lacking. Furthermore, according to St. Thomas, there ought not to be measure in the intention of the end. Cf. 2, 2, q. 184, art. 3 c.

Finally, the patrons of the former opinion connect such consequences with positive imperfection, that it is far better and safer for eternal life to sin venially a hundred times than, for example, not to admit a religious vocation.

The latter opinion is followed by Cajetan, in 2, 2, q. 186, art. 2 ad 2; art. 9; Valencia, t. 3, d. 19, q. 2, p. 1 ad 3 arg.; Passerini, *De hominum statibus*, t. 2, in 2, 2, q. 184, art. 3, n. 43-45, 70-73; Toletus, *Summa casuum conscientiae*, l. 3, c. 2, n. 1; and recently Hugueny O.P., "Imperfection et peche veniel" (*Rev. Clerge fr.*, t. 53, p. 641-661); Fonsegrive, "La loi morale et la loi sociale" (*Quinzaine*, December 1, 1905, p. 322).

[1] *Summa*, 1, 2, q. 108, art. 4. - (2) Cf. our little work concerning religious and sacerdotal vocation.

— Our conclusion. It is not in our mind to decide this controversy. Yet what is certain is that man ought not to make his elections positively under the aspect of the better good, but it is enough that he direct himself according to the norms of honesty. For a severer obligation, if it were common (for certain select persons prudently assume it by vow), would reduce men to straits which would be dangerous to honesty itself.

Furthermore, as it seems to us, if the former opinion seems truer, that is, if there is no individual obligation of following what is most clearly better or what God clearly inspires to be done, those withdrawals of actual graces, those dangers of eternal life by which the patrons of the former opinion strike minds, are chimerical. But then it must be said in a more general way what Cornelius a Lapide

said concerning the election of a state of life (on 1 Cor. 7, 7): "Choose the state which you will, and God will give you the fitting and proper grace that in that state you may live decently and holily." For in what way someone would expose himself to such danger of eternal life without sin, even grave sin, we confess that we do not see.

Summary

— I. Imperfection, which denies further perfection, can be simple lack, if it is negative, or privation, if it is positive.

From the side of deliberation, indeliberate movements toward non-evil things are negative imperfection; toward evil things, they are positive imperfection, because they connote privation of integrity.

II. For not a few of the modern age, free elections of a thing honorable but not better are positive or negative imperfections, according as one was or was not specially invited to better things.

But for others, whose opinion today is prevailing, these so-called positive imperfections are venial sins, since deliberate neglect of a divine invitation cannot be altogether honorable.

Yet against this stands the fact that sin is not without a precept, and that freedom of option is greatly inculcated by the Fathers, when evangelical counsels are treated. This at least is established: man ought not to make his elections under the aspect of the better good. And, if no individual obligation of following what is clearly better is established, then the dangers of future life also must be denied which are so urged by some: for to expose oneself to these would be gravely culpable rashness.

Title II: The Moral Specification of Sins

The usefulness of this title is both doctrinal, since a distinct notion of specification helps the understanding concerning sins not a little, and practical, since for the penitent and confessor some knowledge of moral specification is necessary for defining the obligation of sacramental accusation.

— I. Moral specification of venial sin. The question concerning the specification of venial sin cannot be doubtful. For in venial sin there is nothing except an undue conversion to a creature. Therefore specification will necessarily be made from the side of that undue conversion. Whether you say: specification is made from the object to which the conversion is made, or whether you say: specification is made from the disorder of that conversion, the matter falls back into the same thing: you only change what is said in the direct case or in the oblique. Suppose immoderate eating. If you specify by appetite for food, since the object is affected by privation, in estimating the object one will advert to the privation by which it is affected, or to the note of intemperance; if you specify by contrariety to the virtue of temperance, in estimating that privation, one will attend to that which remains of order in that appetite, that is, to the relation of food to the man for whom it is destined. Besides, every privation receives its quasi-species from the opposite form. That form is revealed by the object itself. Wherefore practically one comes to the same conclusions. St. Thomas himself admits this: if you prefer to distinguish sins according to the opposed virtues, "it would return to the same thing; for virtues are distinguished in species according to objects" (1, 2, q. 72, art. 1 ad 2).

Yet because disorder is not voluntary according to itself, while conversion to the object is voluntary, for the sinner intends to exercise an act of the will in such matter, it is better said that sins are specified according to objects. For a species is constituted according to that which is of itself, and not according to that which is *per accidens*, "because those things which are *per accidens* are outside the notion of the species." And therefore sins are distinguished in species from the side of voluntary acts, rather than from the side of the disorder existing in sin. Therefore, if we wish to speak accurately, we shall say that the species of venial sins are distinguished, more than by departure from the order which deforms the act, by the deficient goodness of the object.

And add this. If you specify by the object, from the beginning you exclude that error by which you might think that from the virtue to which the sin is opposed the ultimate specification is already taken; whereas several sins diverse in species are opposed to the same virtue, for example, justice. Thus homicide and theft are both opposed to commutative justice, and nevertheless are separated by no slight diversity of species.

— II. Moral specification of mortal sin.

When mortal sin is being treated, beyond the privation of rectitude which is detected in the object itself and participated by the agent, another privation is had, that is, aversion from the end, which follows in the agent upon conversion to a commutable object and is proper to him. For the ultimate end belongs to the agent, but not to the object as such. Now, if this privation specified mortal sin, mortal sin could not pertain to the same species as venial sin (cf. n. 393). Furthermore, since that privation is total, all mortal sins would be of the same gravity. But now, from the reason given above, mortal sins also are specified from the object to which the sinner turns himself. Hence they differ

among themselves in gravity. And because they agree in the notion of undue conversion but do not differ infinitely, mortal and venial sins can occur in the same moral species (1, 2, q. 72, art. 5 ad 1).

The doctrine handed down is confirmed by the very names of sins in Sacred Scripture: those names designate positive acts. For example, St. Matt. 19, 19: "Evil thoughts, murders, adulteries, fornications, thefts, false testimonies, blasphemies." Acts, however, borrow their species from the moral object.

— Rule. Therefore as many as are the morally diverse objects at which evil acts are terminated, so many are the species of sins. But they are morally diverse when they have a diverse repugnance with right reason and divine law; or when there is a diverse reason why they do not befit a rational creature. Cf. Vasquez on 1, 2, q. 72, art. 1, n. 14; Billot, *De peccato*, th. 2.

This rule is adequate; the others which are proposed either illustrate or apply it.

[Supplementary note to n. 428.] Nevertheless, it must not be passed over that complete acts and incomplete acts pertain to one perfect species of sin; but incomplete acts, as such, differ specifically from complete acts. Cf. S. Th. 1, 2, q. 72, art. 7, c. and ad 3.

— III. Practical investigation. Therefore practically it must be asked why the action is evil, or why it disagrees with the rule of morals. If the reason is positive law, one must further investigate for what end the law commands; if it concerns a particular precept, one must see by what title it has been given; if the obligation has been voluntarily assumed by vow, oath, promise, covenant, one must inquire of what genus the obligation assumed is. For actions which are not evil except because they are prohibited do not directly reveal their relation to the rule of morals. This is manifested by the end of the law or precept, if this flows from jurisdiction; by the title of the one commanding, if the Superior has only the domestic authority of a father or prefect of a community; by the moral intention of one voluntarily obligating himself.

Once this reason has been found, the ultimate species is not always yet reached, because, in moral estimation, the rule of morals is violated in diverse ways by action, by omission, by excess, by defect; and goods of grace, of life, of honor, of external possessions are related diversely to the person. Wherefore, certainly, sins which are opposed to diverse virtues vary at least specifically, but acts diverse among themselves in species are also opposed to one and the same virtue. Hence this insufficient rule must be used cautiously: "As many as are the violated virtues, so many are the species of sins." Thus idolatry, atheism, superstition differ from one another in species, although all three are opposed to the virtue of religion.

— Diversity of legislator does not change the species. Because laws do not obligate to formal obedience (by which one obeying wills to execute the precept because it is a precept), diversity of legislator (unless diversity of motive comes upon it) does not induce a special malice: thus sin against an ecclesiastical precept by which the divine precept is determined is of one species (say annual confession, paschal communion). In the same way, he is guilty of one sacrilege who violates the vow which he has as a subdeacon and as solemnly professed.

But several specific malices can deform one sin. Thus he who from the law of the Church, from a vow, from an oath, ought to assist at the same sacred service, fails by omission against a threefold specific obligation: for law intends worship to be offered to God; vow obligates lest you be unfaithful

to God; oath, lest you invoke God as witness of falsity. This threefold malice of one sin is opposed to the one virtue of religion.

Summary

— I. The moral specification of sin, not only of venial sin, which is clear, but also of mortal sin, is made from the object to which the sinner turns himself inordinately, because from this side alone the act is voluntary of itself; therefore, when mortal sin is being treated, it is not made from aversion from God, the ultimate end, which is the same in every grave sin.

II. Therefore as many as are the morally diverse objects at which evil acts are terminated, so many are the species of sins.

Wherefore one must see why the action is evil. And furthermore it must be attended that violation of order by action and excess differs morally from the same violation by omission and defect. And according to the diverse relation to the person, the sins vary by which the person is violated either in soul, or in body, or in reputation, or in honor, or in exterior goods.

But diversity of legislator does not change the species, since no obligation of formal obedience is imposed.

Title III: The Numerical Distinction of Sins

The usefulness of this title chiefly regards the use of the sacrament of penance.

— I. Principles [1]. 1. From that from which a thing has being, it also has unity, since one and being are convertible. But the moral and sin is from the will. Therefore from the will it also has unity, at least in such a way that where there are several successive wills, for example because of retractions or interruptions of acts, several sins are necessarily had. Hence a certain first principle: when wills are multiplied, sins are multiplied.

2. Nevertheless, in forms which are distinguished by number alone, the principle of multiplication is the division itself of matter. Thus, since not only interior acts but also commanded acts are voluntary, we arrive at another principle: when sinful acts are multiplied, sins are multiplied of themselves.

3. Yet if those sinful acts come together into a certain moral unity, the second principle must be tempered by that third one: several acts which, commanded by the same deliberation of the will, morally effect one thing are one sin.

But several terms of one intention, as such (for example, several persons who suffer detraction, theft, homicide), do not multiply sins: whether they are apprehended under the confused notion of multitude, which then Lehmkuhl also concedes, or whether the evil intention and action are directed to individuals as distinct. Thus we say with Suarez, *Paen.* d. 22, s. 5, n. 34-36; Lugo, *Paen.* d. 16, n. 126 sq., against Vasquez, 1, 2, d. 74, 75, and in 3 p., q. 91, dub. 4 and 5; St. Alphonsus, l. 5, n. 45, 46; D'Annibale I, 284-288.

We bring forward this easy reason, because an act indeed takes its species from the object, but why it should take plurality from that exterior term is not seen. And this conclusion coheres so with the principle of St. Thomas concerning unity to be sought from the will, or principle, and specification from the object, or term, that, unless there were the authority of others, we would perhaps say that the diverse opinion is improbable.

Wherefore even diversity of total objects can indeed impede the moral unity of acts and supply us an indication of plurality; but, contrary to what is often done today, it cannot be proposed as the formal reason of multiplication. For the sake of greater clarity, the individual principles seem to have to be declared more fully.

[1] N.B. Here there is no question of the number of malices, of which several can exist in one sin, just as a man remains one although he is furnished with several qualities.

[1] *Theol.* I, 352, where he simply alleges for this Laymann, l. 1, tr. 2, c. 3, n. 2; Lugo; Suarez; Ballerini-Palmieri, I, n. 630 ff., who nevertheless virtually exclude the distinction which he uses. But rather they introduce another, since they require that the external act be single (cf. Ball.-Palm. l.c. n. 632 and 638), which squares with the things said by us here, n. 432, 2.

— II. Greater explanation of the first principle, concerning plurality of wills with applications.

1. As many renewals of the will as there have been after retraction, so many sins by number will be added to the first will. For by retraction the preceding will is necessarily ended.
2. The same must be said if, even without penance concerning the preceding act, there has voluntarily or formally been a cessation from it. Thus, without penance, a thief, an adulterer, because the occasion has passed, can lay down the will of stealing, of committing adultery. As often as, with the occasion returning, they have again assumed that will, so often they will necessarily sin.
3. Involuntary and natural cessation, for example by sleep, by distraction to other things, can also impose an end on the will or morally interrupt the act. This is had whenever the following act no longer arises from the force of the prior deliberation; but not if "return to a similar act occurs as if naturally without a new deliberation" [1]. And here it must be observed that a will is not judged new which, having become more remiss, on the occasion of a certain exterior presence of an exciting cause or of interior meditation, becomes again more intense, just as it is not a new fire to which new fuel is brought, and therefore from languid it is converted into ardent.

The question therefore arises, how long one will can morally persevere. One general rule is not at hand for us. To help moral estimation, there must be distinguished interior acts without an efficacious proposal; acts which contain an efficacious proposal or will of executing; and exterior acts.

Separated from the proposal of execution, interior acts cease rather easily, and Lugo thinks that regularly they cannot morally persevere beyond two or three hours (2): say interior blasphemies, delights concerning impure phantasms. Yet an unclean desire, hatred of neighbor, is preserved longer in the habit itself. Indeed voluntary aversion from a neighbor can persevere for months.

In a proposal of executing, the will can be sustained for a long time. Nevertheless persons and also matters are to be distinguished. Thus a sought vengeance, a sought woman, a sought occasion of stealing, as it were lie hidden the same in conscience, even after sleep, after distracting occupations; while, on the contrary, a proposal of easier execution will be interrupted more quickly. Thus Ballerini-Palmieri judge that the proposal of reading a depraved book is for the most part interrupted after an hour [1]. We think this is true if it concerns a book which is at hand, because for a proposal of this sort a weaker will, which is extinguished more quickly (2), suffices.

In an external execution begun, the same internal will easily endures until completed execution, for example in him who repeats external attempts toward homicide, who intends by several partial thefts to steal one grave sum, who, after he has determined to read one prohibited book, completes the reading by several physically interrupted times.

[1] Suarez, *Paenit.*, d. 22, s. 5, n. 11. - (2) *Paenit.*, d. 16, n. 670.

[1] *Op. theol.* I, tr. 4, n. 657. - (2) Lugo, op. c. d. 16, n. 590.

— III. Greater explanation of the other principle taken from the plurality of exterior acts.

Of itself, as many as are the distinct exterior consummations, so many sins must be numbered. But exterior consummations are distinct when exterior acts are not united among themselves. Therefore he commits several sins who, although in the same conversation, now detracts from one person, now from another; who several times completes solitary sin or fornication.

— IV. Greater explanation of the third principle, concerning the moral unity of several acts, even exterior ones.

1. Exterior acts subordinated among themselves are morally united as directed to one end or complete object. Thus all exterior acts ordered to one end of theft [3], likewise imperfect acts (kisses, looks, touches) directed to one copulation.
2. Exterior acts of the same notion are morally united, which are repeated in the same heat of passion, or are known and intended or chosen under a certain common apprehension. Thus imperfect acts of luxury which are added as a certain complement to fornication, thus several insults, contumelies, imprecations pronounced in the same anger, several slaps morally struck at the same time, indeed several wounds inflicted at the same time in the same way. For the will was not indeed of saying such an injurious word, giving such a slap, inflicting such a wound, but more generically, of humiliating, striking, wounding. For the same reason, he who, in a state of sin, approaches to hear confessions, wills on that occasion to administer the sacrament sacrilegiously, in which one object the several absolutions given agree. The very notion of sacrilege is the solemn administration of the sacrament in a state of sin.

Yet of itself, he will commit a distinct sin who immediately boasts of fornication, both because of scandal and because this boasting is not the natural complement of fornication (Suarez, *Paen.* d. 22, 15, n. 27).

[3] St. Thomas, In 1 Sent. d. 12, q. 1, art. 1.

— Corollary. Because terms do not multiply sins, he sins once who by one act of hatred or detraction hates several persons, detracts concerning several even before several; who by one act carnally covets several persons; who by one act kills two or brings harm to several; who by the same act blasphemes against the twelve apostles or denies several articles of faith.

— Concerning the plurality of omissions. You ask whether or not he necessarily commits several sins who for a month does not hear Mass, does not recite the office, or through Lent observes no fast, no abstinence?

From the things just said it is clear that the internal proposal concerning that long-lasting omission would be one sin. But the question is made concerning the omission itself which follows. First, as irrelevant, we must exclude the question concerning those sins which in reality consist in committing, although in species they are sometimes shown negatively. Thus by positive eating the precept of fast and abstinence is violated. Wherefore as often as an act is done which contains a substantial violation of this sort, so often it must not be doubted that sin is committed.

True omissions are had in merely positive precepts, by which no act according to itself is prohibited: for example, in the precept of hearing the sacred service, of reciting the breviary.

The received opinion has it that as many days as there have been on which the sacred service or breviary was omitted advertently, so many sins are numbered: and this whether the will itself of the omissions was one or multiple. For individual omissions are distinct sins because concerning individual ones there are diverse precepts; nevertheless he does not sin several times who has omitted the whole office of one day, which is customarily recited by parts, because there is one precept terminated to the whole office of the day [1]. These reasons seem difficult. For it is not

repugnant that diverse precepts be violated by one single action. Cf. n. 430. In order that several sins be present, it is necessary that we find several wills, or at least sinful acts, to which the evil will gives as it were the form of sin. But omission as such says no act.

But from St. Thomas we know that a blameworthy omission can be commanded by a twofold will: by a will which directly intends the omission itself, or by a will which directly wills some good, for example, a game with which the omission is necessarily joined. In the latter case, when the game is repeated, there is repeated the act which, as the cause why Mass or the breviary is omitted, is gravely blameworthy. And thus there is place for the rule which says that there are several sins where there are several sinful acts.

The difficulty is graver where no inordinate affection for a positive thing joined with the omission, but impiety or unbelief, directly rejects the obligation of Mass or breviary. Unless the concordant opinion of doctors multiplied those sins indistinctly, we would incline to the opposite side. Now we shall hand down this explanation of the received opinion. The precept of hearing the sacred service, of saying the breviary, so urges us that at least the last Mass which is celebrated on a feast day must be heard, and that at least in the last hour of the day the breviary must be recited. Therefore, while the last Mass, the last hour of the day stands, any other action is prohibited, just as the game was prohibited because of affection for which someone had determined to omit the sacred service. The reason alleged also shows well why he who omits the whole burden of the breviary sins only once; for the substance of the precept is preserved if the whole breviary is recited at once in the last hour of the day.

What if he is physically impeded? It must be said otherwise concerning him who by a voluntary throwing away of the breviary now for some time cannot recite the breviary. He incorporated his evil will into one single throwing away. Wherefore he sinned once only, of itself. The act of one omitting restitution for a long time is also diverse. For this obligation excludes no other act morally and of itself, and urges perpetually. Wherefore, the same will remaining, one sin remains. Cf. Lugo, d. 16, num. 548 and 549.

Hence we come to this conclusion: exterior omissions do not multiply sins, except insofar as they exclude or prohibit several positive acts.

N.B. - Indeed, an easier reasoning is ready at hand by which we would be led to the same conclusions in this way: privation is reduced to habit, omission to act. Therefore as many sins as there would be by action, so many there will be by omission. But as often as prohibitions recur, so often sin is committed by the prohibited action. Therefore as many as are the prescribed actions, so many are the omissions. And in this way it is perceived why the daily precept of the breviary produces a daily sin of omission, whereas a long omission of restitution does not multiply sins, because restitution must be made only once.

This easier reasoning would be efficacious if the numerical notion of sin were taken from the object. Then, just as happens for specification, omission would be conceived after the manner of being. But number is estimated according to acts of the will which can be terminated to omission as to action. Therefore there is no place for that interchange of omissions with actions; no cause is indicated why more acts of the will are to be numbered than there truly were.

[1] Lugo, *Paen.* d. 16, n. 540, 547.

— You ask how often he sins who grows hardened in some grave sin?

As often as he voluntarily, conscious, omits the precept of penance, which urges of itself or *per accidens*; and as often as positively (by morally distant acts) he refuses to amend himself. But he does not sin gravely when he bears himself negatively, or refuses not absolutely but here and now. Cf. D'Annibale I, 268. We are speaking of grave sin. For at least a venial obligation exists, from charity toward oneself, of rising morally at once from sin.

— What if the principal action, for example fornication or theft, to which the others expressed order, could not happen by chance?

Not a few then think that, the principle of unity being lacking, several sins are made, and therefore require that all the means be explained [1] (for example, a ladder placed against a wall for stealing); or at least those which are evil in themselves [2] (for example, harmful acts, shameful touches). But how that which because of intention was one becomes subjectively multiple, we do not see. Wherefore, with others (3), we think it is enough that the guilty person indicate his intention of the completed sin, execution truly begun, and this incomplete. For externally he is truly guilty of attempted theft or fornication.

[1] St. Alphonsus, *Theol. mor.* l. 5, n. 42, from Viva, *Paen.* q. 5, art. 6, n. 6, *Notandum* 2.

[2] Ballerini-Palmieri, *Op. th.* I, tr. 4, n. 668. - (3) D'Annibale I, 287 (15); Van der Velden-Piat I, p. 150 note; Genicot-Salsmans I, 167.

— Accusation of sins. 1. A penitent who spontaneously or when asked accuses the number is regularly not to be questioned concerning the duration of his action, since duration of itself is a merely aggravating circumstance. It is otherwise if he manifestly errs. For not rarely the number of sins must be conjectured from the long duration of an evil will.

2. Often it will also be more difficult for the penitent distinctly to define delays, interruptions, etc. Then let him state the long time through which the evil affection endured (for example, through the whole day I shamefully desired; for a month I bore hatred). And the confessor himself, attending to the character of the person, the nature of the thing, and the circumstances, for example, of occupations, will morally conjecture how many interruptions there were. Yet where it can be done, let the penitent himself add whether the interruptions were notably rare or frequent. This especially has place if the interruption endured for days, weeks, or a month.

And because the will is more easily interrupted when physical inability stands in the way of execution, let him who for a long time omitted restitution or thought of perpetrating a crime indicate the times during which no opportunity of execution was being given.

3. This mode of indicating frequency will not rarely be more expedient: that the penitent indicate the accustomed frequency of sins by week or month.

By this reason, one arrives at a better knowledge of the state of the penitent, on account of which knowledge, after all, distinct accusation is demanded, than by mathematical indications in which there is silence concerning the habitual state of the soul.

4. Finally, observe that several moral species which can be had in one act must always be accused, nor can the confessor be positively deceived. Certainly, if one accuses detraction, the confessor will well understand that it could easily have been made before several or before one; but he who betrays himself as a homicide will be judged guilty of one homicide, unless he at least confusedly indicates the plurality of persons killed. Cf. Lugo, *Paen.* d. 16, n. 140.

Thus far the things which it seemed good to say concerning the most complicated question, where disagreements of opinions, which sometimes mix specific reasons with numerical ones, induce wonderful confusion.

Summary

— I. Sin has its unity from the will which is its cause. Wherefore when wills are multiplied, sins are multiplied. Then the very division of matter is a principle of multiplication. Wherefore, when sinful acts are multiplied, sins are multiplied of themselves. Except, however, if those acts come together into a certain moral unity.

Plurality of terms as such does not multiply sins, provided they are reached by one intention. Therefore:

II. - 1. Wills are multiplied necessarily after retraction and after formal cessation or interruption. Therefore this rule can be established:

As many as are the new deliberations of sinning, so many are the sins. But the force of one deliberation can persevere even after sleep. Under the aspect of moral perseverance it is useful to distinguish interior acts without an efficacious proposal, acts of efficacious proposal, and external executions begun.

Of itself, the more the will is fixed externally, the longer the same will be able to endure. Yet certain interior affections, for example of hatred, can remain for a long time.

2. As many as are the distinct exterior consummations, so many are the sins. Nevertheless exterior acts subordinated among themselves are morally united as directed to one end, for example, to one theft or to one fornication. Exterior acts are also morally united when they are repeated in the same heat of passion, or chosen or intended under a certain common apprehension, at least when they are of the same notion.

III. A proposal of omitting Mass for a month is one sin. The concordant opinion of doctors wills that there are as many sins as there are Masses truly omitted, unless assistance at Mass has become impossible. This reason can be: that while the hour of the last Mass stands, every action or mode of bearing oneself which cannot be composed with assistance is now prohibited. Then the rule would be: by omissions sins are multiplied insofar as they exclude or prohibit several positive acts, which nevertheless have been effected.

He who grows hardened in grave sin sins as often as, conscious, he omits the grave precept of doing penance, and as often as he positively is unwilling to amend himself.

Although the principal action to which several secondary actions were ordered has been made impossible, nevertheless these probably remain one sin, because they were joined in the efficacious

intention.

IV. Accusation of sins. 1. He who accuses the number is not to be questioned about duration, unless he manifestly errs. 2. If it is difficult for the penitent distinctly to define delays, interruptions, etc., it will be enough that he indicate the long time through which the evil affection endured. Let him add, if he can, the times through which execution was impossible, because then the will is more easily interrupted.

And often it will be useful that he indicate the accustomed frequency by month or week.

V. Yet several moral species which occur in one sin must always be accused. Nor can the confessor be positively deceived. Therefore, one guilty of several killings will have to indicate the plurality at least confusedly.

Title IV: The Punishments and Extinction of Sin

Usefulness. It is not for us to treat expressly either of the punishment or of the remission of sin, since those parts are taken up in the dogmatic treatise on Penance and on the Last Things. Yet because, that we may be more averse in soul from sin, it is of no small profit to know the harms and deadly consequences which are brought on by sin; and because the knowledge of the reason by which sins are extinguished illumines the ways of salutary penance: therefore, not only for possessing more adequately the doctrine concerning sins, but also for suggesting opportune admonitions to the Confessor and spiritual Father, it will be worth while here summarily to embrace the golden judgments of St. Thomas concerning each argument, that of the punishments and that of the remission of sins. And concerning the punishments of sins we shall adhere more closely to the exposition of Card. Billot in the little work *De Peccato personali*.

Chapter I: The Punishments of Sin

— I. Notions. Punishment is properly defined: an evil contrary to the will and inflicted because of fault.

In this definition, evil is taken with respect to the one suffering, so that it is: the corruption of one's own delectable good; the will to which it is contrary can be elicited or innate: as when there is taken away from one ignorant of it a good whose loss he would grieve over if he knew its worth. Thus many now do not at all grieve over sanctifying grace lost.

And because the evil is then less contrary to the will, in expiation by punishments voluntarily undertaken, indeed patiently tolerated, the notion of punishment is contained only in a diminished way: as happens to the souls of purgatory. (S. Th. 1, 2, q. 87 art. 6, c. and 4 Sent. d. 21, q. 1 art. 1, 4.)

Observe, however, that in the present economy every evil of a rational creature has the notion either of fault or of punishment, so that without fault no evil would have been for him.

II. Divisions. One punishment is concomitant, which sin brings with itself with greater or less necessity; another is inflicted, which has an extrinsic cause.

One is medicinal: unto a remedy of the salvation of the delinquent or of others; another is vindicative: unto the pure vindication of violated order. Every punishment as denounced, and all punishments inflicted in this temporal life, are medicinal; while the punishments of the future life are vindicative.

III. The guilt of punishment is the obligation of sustaining punishment. It is distinguished from the guilt of fault by the very term, since the guilt of fault is terminated to habitual fault, the guilt of punishment to punishment itself. The proximate title of punishment is the guilt of fault; the remote title is actual fault. Wherefore the guilt of punishment is placed as it were intermediate between fault and punishment, yet in such a way that it approaches more to fault than to punishment. Wherefore God cannot effect the guilt of punishment. (Suarez, *ad 1am 2ae*, Tr. V, d. 7, s. 1, n. 4.)

— IV. The punishments of sin. By sin man perverts the threefold order to which he is subject: the order of reason, the order of human law, the order of divine law. Therefore he commits the guilt of a threefold punishment, so that he is punished by himself, by other men, and by God.

1. He is punished by himself, through concomitant punishments. Personal sin of perfect reason, or mortal sin, has as companions: disorder in the man himself, or the privation of due rectitude, because he is turned away from the last end; then, at least of itself, anxieties of the passions and remorse of conscience.

For privation of rectitude, although, because of its connection with the chosen or intended enjoyment of a changeable good, it is voluntary simply, nevertheless is not voluntary except accidentally, and is involuntary in a qualified sense. And since it manifestly has the notion of evil, it possesses the notion of true punishment.

Furthermore, sin diminishes the natural inclination to honorable things, and thus diminishes the mode, species, and order which are in the very nature of the sinner; and insofar as it takes away grace and virtue, it removes the mode, species, and order which are in grace and virtue (1, 2, q. 85 art. 4). By this reason sin disfigures the sinner.

It also corrupts nature as it is a principle of acting. For, because of the divine help withdrawn and the vicious habits left from acts, the inclination to good is diminished, and the wounds which original sin has branded into nature are increased: infirmity, ignorance, malice, concupiscence [1].

Finally, by sinning mortally, man undergoes the yoke of a twofold servitude. By one kind of servitude he is given over to sin: from which servitude, of itself perpetual, Christ has freed us. For, while we are in the way, through his merits we have abundance for rising from sin, so that our servitude is no longer except less properly so called, and in a certain way voluntary. By the other kind of servitude, we suffer the necessity of bearing the consequences of sin: the propensity to sinning arisen from the habit of sin, incentives of temptations, the obligation of penal expiation, besides other harms in physical powers, in facility of talent, in reputation.

2. He is punished by men, who deny honor and esteem of probity to the sinner; and most of all by the legislator and judge, who, considering the transient act of sin with its exterior consequences, enact punishments by which provision is made for the exterior order of the community.
3. He is punished by God, who, as institutor and ruler of the universal order, punishes as long as that order is to be restored in some part by punishment.

Moreover, punishment inflicted by God is divided into punishment of loss and punishment of sense. In both, however, regard to God, regard to the subject, and regard to the fault are to be attended to. With regard to God, the punishment of loss is every punishment which God inflicts formally by not acting; the punishment of sense is that which he inflicts either by acting, or by willing or permitting the effects of withdrawal by which he withdraws himself either as the infinite Good or as benefactor. With regard to the subject, the punishment of loss formally consists in privation alone, while the punishment of sense designates a positive torment, which nevertheless can proceed from the privation itself. Finally, with regard to the fault to be punished, theologians, with St. Thomas, assign the punishment of loss to aversion from God, the punishment of sense to conversion toward the creature. But then the same theologians are accustomed to call the very affliction which follows privation, no longer by the name punishment of sense, but by the name punishment of loss.

In children who die with original sin alone, privation of beatitude is had without any positive affliction even of soul.

In souls, on the contrary, which are detained in purgatory, the delay of the possession of God is most afflictive, although it does not simply put on the notion of loss, since those souls know that they possess, in habitual grace, the root of eternal glory.

[1] Cf. Trid., s. VI, c. 1.

— Why punishment is eternal. Mortal sin, and therefore the guilt of punishment, is indeed, considered in itself, indelible.

Yet because through God, that is, through God's pardon, even mortal sin can be taken away and the principle of charity restored; and because it seems to pertain to the liberal goodness of God that he not deny grace to the man doing what is in him, the sanction of eternal punishment, whose tremendous mystery is not to be denied, would be repugnant to our sense, unless this final consideration were added: that after this life the human will is no longer mobile, but will adhere by perpetual obstinacy to the evil from which, at least at the end of the present life, it has not withdrawn. Whence the Angelic Doctor does not hesitate to write: "For there would not be perpetual punishment of the souls which are damned if they could change their will for the better, because it would be unjust that, from the time when they had a good will, they should be punished perpetually." (*Contra Gentiles*, l. 4). Concerning that immobility of the pure spirit and of the separated soul, let the metaphysicians be approached.

— Corollary. The same privation of sanctifying grace is, considered in itself, punishment, insofar as God formally deprives man of grace, not indeed by acting, but by now no longer infusing grace. This punishment is inflicted, insofar as it has God as author, and it is concomitant, insofar as in it there is contained the intrinsic disorder in man which accompanies every sin. It is also fault, insofar as it is an imputable aversion from God, who is to be loved supremely in himself by charity; and it is stain, insofar as it is a detriment of brightness proceeding from spiritual contact, through affection, with an object morally evil.

Summary

— I. Punishment, or an evil contrary to the will and inflicted because of fault, is one kind concomitant, which sin brings with itself, and thus seems to be inflicted on the sinner by the sinner himself; another kind is inflicted through an exterior cause, either unto a remedy of the salvation of the delinquent or of others, and then it is medicinal; or unto the pure vindication of violated order, and it is vindicative. The guilt of punishment is the obligation of undergoing punishment, which proximately arises from the guilt of fault, remotely from the actual fault itself.

II. Man sinning perverts the order of reason, and therefore he is punished by himself through concomitant punishments: disorder in himself, anxieties of the passions, remorse of conscience, the taking away of supernatural comeliness, the diminishment of natural comeliness, the diminishment of inclinations to good, the worsened wounds of original sin, the accepted servitude of sin (which, without Christ, would be perpetual), and the necessity of suffering the consequences of sin. He perverts the order of human society, and therefore he is punished by men by lesser esteem, and especially by public power, so that provision may be made for the exterior order of the community. He perverts the order of divine law, and therefore he is punished by God, by punishment of loss and punishment of sense: which are understood in various ways, with regard to God, with regard to the subject, and with regard to the fault.

III. Because God can restore the principle of order, and because it is fitting for God not to deny grace to the man doing what is in him, the true cause of eternal punishments is in the immobile will of the separated soul.

Corollary. The same privation of sanctifying grace is, considered in itself, concomitant punishment, inflicted punishment, habitual fault, and stain.

Chapter II: The Extinction of Sin

— I. Extinction of mortal sin. 1. Necessity and things presupposed. Because sin remains in guilt, or moral imputability, there is place for its extinction. This can be had if the offender has offered a condign satisfaction, or if God has freely pardoned the fault to the penitent. But the extinction of mortal sin: a) supposes formal reconciliation with God, which succeeds to the state of enmity in which the sinner was miserably living; b) requires formal penance, or detestation of sin, so that only because of ignorance or forgetfulness is a virtual detestation accepted, which is contained in an act of perfect charity [1].

2. Conditions. - For mortal sin, a mere man cannot offer condign satisfaction. Wherefore the restitution of grace and divine friendship with regard to us is always gratuitous. But divine goodness, accommodating itself to our condition as mutable men, is not only prepared to restore grace to the penitent, but itself invites and moves us to seek reparation.

3. Modes. - Reparation is made outside and within the sacrament. Outside the sacrament it is made by perfect contrition. For when man retracts sin from the motive of love of God above all things, he has done whatever he was able to do. It is then not fitting for God to do less than pardon the offense. And so equality by this reason of proportionality is had, while pardon stands to that which befits God as contrition stands to those things which the sinner can do. Under this respect perfect contrition is said from the nature of the thing to expel the guilt of fault (C. Billot, op. c., p. 71).

In the sacrament sin is taken away *ex opere operato*, provided that, through at least imperfect contrition, the sinner has removed the obstacle of affection to sin.

But because mortal sin induces a stain distinct from habitual fault only by reason, the pardon of sin can take place by way of washing away the stain, as in Baptism, or by way of remission of fault, as in the sacrament of Penance.

4. Effects. - Remission or washing away of sin must remove both elements of habitual sin: the imputation of sin and the consequent aversion of God. The aversion of God is taken away by the infusion of grace.

Once the friendship of God has been restored, the punishment of loss, which corresponded to violated friendship or to the aversion of God, is necessarily taken away. The punishment of sense as eternal is also necessarily taken away. For the eternity of the punishment of sense depended on the eternal punishment of loss; all eternity of punishment was founded in the permanent perversion of order, which has ceased; and it is repugnant that someone should at the same time, from grace, have a right to eternal beatitude and be obliged to pay eternal punishment for sin. But just as a friend, although he restores the old friendship, can demand compensation for the harm brought, so God can demand painful compensation for satisfaction unduly sought outside himself. And so temporal punishment to be paid will not rarely remain. But this, since it is to be tolerated patiently from a

friend, or is undertaken by the man himself for spontaneous expiation, is less involuntary, and thus it preserves the notion of punishment only in a diminished way.

[1] Moreover, an act of charity is by its nature such that a man who becomes conscious of a grave offense of God, from that love spontaneously and necessarily breaks forth into formal detestation of sin.

— II. Extinction of venial sin. Contrary to what we were saying about mortal sin, the extinction of venial sin:

1. As to necessary conditions:

a) Does not of itself suppose any reconciliation properly so called, since it has not made man an enemy of God. Of itself, I say, because if it has been committed by a man constituted outside the state of grace, it will not be taken away before grace has been restored; b) It does require that the affection to that sin be taken away; but because of that virtual retraction, it does not seem to require a formal detestation of penance. Thus also among human friends, the guilty party of an action slightly displeasing can indeed ask and obtain formal pardon; but he can also repair the fault by a good affection and action, and the other friend can forget the fault, without formal conversation about that matter; c) The retraction of venial sin is not contained virtually in every act of charity, even perfect charity, since this can be composed with venial sin.

And so the reason why, outside the sacrament, perfect contrition is required for the remission of mortal sin, that is, the necessity of recovering the principle of reparation, or charity, here plainly fails, since the principle of charity subsists. Only the use of the principle of charity is required.

2. Which use? A twofold use can be had:

a) He who has sinned can have recourse to the sacrament of penance, which will directly remit the sin, if the obstacle of affection to sin has been taken away at least by attrition;

b) A just man also who has sinned venially can obtain pardon *ex opere operantis*, through a fervent act either of formal penance, or of goodness contrary to the disordered act, by which therefore it is virtually retracted.

All those acts are imperatively acts of charity.

For one sinning venially has neglected the law of present charity, and thus has created some difficulty, some obstacle, to the fervor of charity. It is necessary to remove this by the strong impulse or effort of a good act (Cf. S. Th., *De malo*, q. 7 art. 11, c.).

3. That remission, which ought to restore no habit, is a mere non-imputation of the past sin.

Once the fault itself has been remitted, the debt of punishment is not yet extinguished. But, besides the use of indulgences, that debt can be redeemed through the compensation of all good works, especially alms.

4. And so to the question whether, outside the sacrament of penance, an act of perfect contrition is required for the remission of venial sin, or whether attrition suffices, no simple affirmative or negative response can be given. Contrition is required in a man who is in the state of sin; attrition suffices in the just man, and therefore suffices because the state of justice denotes the

principle of charity, with which existing, venial sin is simply and intrinsically reparable. Yet, as has been explained, formal attrition itself does not seem necessary.

— According to St. Thomas, those who depart from this life with venial sins not retracted obtain remission of the fault through an act of charity toward God, repugnant to those venial sins; but since they cannot merit absolution or remission of punishment, they have every punishment to be paid, unless it is lightened by the suffrages of the living or by intercession, for example, of the B. V. M.

Summary

— I. The extinction of mortal sin supposes formal reconciliation with God, and requires formal penance, so that only because of ignorance or forgetfulness of sin does the virtual penance suffice which is contained in an act of perfect charity. Since man cannot make condign satisfaction, the restitution of grace and friendship is always, with regard to us, gratuitous. Outside the sacrament it follows perfect contrition, by which man does whatever he himself can; or in the sacrament grace is restored through the sacrament itself, provided that the obstacle of grace has been taken away at least by attrition. But it is made in baptism by way of washing away the stain, in penance by way of remission of fault. Pardon, however, takes away aversion from God by the infusion of grace and at the same time takes away the imputation of sin. Once the friendship of God has been restored, the punishment of loss, which corresponded to aversion, and the eternal punishment of sense, which depended on the punishment of loss, are necessarily taken away. Temporal punishment can remain, but no longer punishment properly so called, since it is to be paid patiently by a friend.

II. The extinction of venial sin neither supposes formal reconciliation nor seems to require formal detestation of penance. Yet, since it can be reconciled with charity itself, not every act of charity, even perfect charity, contains its virtual retraction. To extinguish venial sin there is required a certain use of the principle of charity, whether sacramental or extrasacramental, which then is made through a fervent act either of formal penance or of goodness contrary to the disordered act. For, while one sinning venially has neglected the law of present charity, he has created some obstacle to the fervor of charity, which he must remove by the contrary effort of a good act.

But the remission of venial sin is a mere non-imputation, which nevertheless does not necessarily take away the debt of punishment.

Those dying with venial sins not retracted obtain, through a contrary act of charity toward God, remission of fault, the whole debt of punishment remaining.

Title V: The Flight from Sin

The usefulness of this title, in which we treat of the proximate and remote occasion of sinning, is very great in the use, both active and passive, of the sacrament of penance, so much so that not a few writers defer the question of the occasion of sin to the treatise on the sacrament of penance. Yet it is a general question, whose proper place is here. Nor can moral solutions be understood unless you know the reason and measure of the obligation of fleeing sins and their dangers.

— The obligation of fleeing sins. 1. The negative part of Christian justice: turn away from evil, obliges us to abhor moral evil with the hatred of which it is worthy, that is, with supreme or absolute hatred. Violation of this obligation, according to the gravity of that moral evil, will be mortal or venial.

Nor can we today, when so many men and philosophers deny absolute moral obligations, indeed so easily prefer human advantages, whether their own or common, to moral duties, insist enough on this severity of true religion, and make this persuasion familiar to the faithful: that the laws of morals, like the laws of faith, must be honored with the fortitude of martyrs.

But moral evil properly such is nothing except formal sin. For moral evil is the evil of the will, which by choosing evil becomes itself evil. But material sin is not imputed to the will. Therefore it is not an evil of the will, nor therefore true moral evil.

2. And so that obligation, as we warned in the treatise on conscience, cannot be transferred to material sin. Otherwise absolute rigorism would have to be professed, nor could we reprove the condemned proposition: "It is not lawful to follow an opinion (probable) or, among probable opinions, the most probable" [1]. But the reason of the diverse rule is easily given, because the evil (not moral) of a particular law not observed is compensated by the good of human action not too much impeded, which, as we have explained before, being loosed from the particular law, is always held by the general norms of honorable action.

And so the obligation of fleeing material sin is converted into the positive obligation of taking care for the observance of the law in a human manner. That necessary diligence varies according to the moment of the law and the capacity of the subject. Lugo discusses the evil of material sin, *Paen.* d. 16, n. 389.

There remains the question of the obligation of fleeing the danger of consent into sin, or rather the temptation of sin, that is, the question concerning the occasion of sin to be fled.

[1] Proposition condemned by Alexander VIII through decree of the Holy Office, 7 Dec. 1690, n. 3. (Denz. 1293).

— The obligation of fleeing the occasion of sin. In order we shall set forth: I. Received judgments with notions; II. The cause of the obligation with our conclusion; III. Various corollaries; IV. The rule of perfection.

I. Notions and received judgments. 1. Notion. The occasion of sin is an exterior circumstance for a man which induces the danger of sinning. And so under this name there does not properly come the danger which a man can find in his nature, in his fragility, in his passions, in an interior act, although

the norms concerning fleeing the occasion must altogether be transferred to certain interior acts. Thus he who knows that he is certainly drawn by a certain kind of phantasms to taking illicit pleasure is prohibited, because of that danger, from deliberately turning over those phantasms.

2. Divisions. a) The occasion is further divided into proximate and remote. But writers do not plainly agree concerning the notion of proximate occasion. Cf. Ballerini, V, n. 105.

From Lugo, *Paenit.* (1): "They call it proximate when it is such from its kind that it frequently induces men of like condition to mortal sin, or experience shows that in this man it has such an effect." Suarez has almost the same thing word for word (2). And, giving the reason of the notion, Lugo adds: "It must be said that an occasion is not called proximate because nothing mediates between it and actual sin, but because nothing mediates between it and the moral certainty of future sin" (d. 14, n. 164).

At n. 149 he thinks the definition must be moderated which some ascribe to St. Gregory because of c. 7, *De Paenitentia*, Dist. 5: that the proximate occasion is one "which we cannot, or certainly cannot without difficulty, use without sin." For then military service and business would have to be abandoned. "Others therefore add," so Lugo himself proceeds, "that an occasion is proximate which a man never or almost never uses, with the circumstances considered, without a new sin, as one who keeps a concubine."

This latter definition does not please St. Alphonsus (3), and he prefers to it this other one: that a proximate occasion *per se* (or with respect to men in general) is that in which men commonly for the most part sin. But immediately he calls a proximate occasion *per accidens* or respectively one in which someone, "although not almost always, nor more frequently, nevertheless has frequently fallen; or because, with his past fragility considered, his fall is prudently feared. For, as we have said, to constitute a proximate occasion, it suffices that a man frequently fall in it." St. Alphonsus therefore describes the proximate occasion special to certain persons more severely than the general proximate occasion. Ballerini abstains from giving his own definition.

d'Annibale (1) reports this mathematical estimate from Gobat: if from ten occasions, seven or more have induced sin. Lehmkuhl (2) says that a proximate occasion is one which brings a grave and instant danger of falling; which is gathered either from sad experience, if a man, "when he was living in those circumstances, more frequently or at least rather frequently sinned in fact: but if he sinned notably more rarely than he remained victor, the occasion cannot be called proximate from the experience of falls"; or from a vehement temptation to which a man is exposed in those circumstances. Genicot (3) approves this definition: "one in which a man always or at least altogether more frequently sins. Whence, also for the future, sin is morally certain or at least very probable." What a proximate occasion is for us will appear after the conclusion.

b) An occasion is called present, continuous, or in being, which is accustomed to surround someone, for example in his own house, in the place to which he goes daily for business; or disjoined, not continuous, not in being, which, at separated intervals, either offers itself or is sought: for example, by visiting an inn. The former is removed, repelled; the latter rather is declined by abstaining, by not seeking;

c) Free is that which a man can abandon without great inconvenience: scandal, infamy, grave detriment. Necessary is that which cannot be left either simply or without great difficulty; whence this can be either physically or morally necessary.

And observe that an occasion can be necessary which at first sight you would have called free. Thus one sinning with a maidservant, or in a workshop, who can dismiss the maidservant or leave the workshop, nevertheless is living in a necessary occasion, if the temptation flows not from such a maidservant or such a workshop, but from a maidservant or workshop as such, and the sinner morally cannot lack every maidservant or workshop. Cf. Lugo, d. 14, n. 150; d. 15, n. 50;

d) It is called absolutely proximate or remote when attention is paid to the common reason of men of such condition and age; relatively such when attention is paid to the peculiar fragility or firmness of some person.

e) An occasion can be proximate in individual meetings, or become so because of frequency, as not rarely happens to betrothed persons;

f) An occasion can be of various sins or of one definite sin (Lugo, *Paenit*. d. 14, n. 163, 164).

3. Flight from a proximate occasion is of a twofold kind: one material, when the thing or person which is the occasion is removed or is not approached; the other formal, when, whether by caution employed or by the will strengthened, the force of the temptation is diminished enough that it can be said to have been converted from proximate into remote.

The means to be employed, concerning which there will be speech in the treatise on Penance, return to this: that the hostile attack be weakened, or that the defensive powers be increased.

4. Norms of acting. There is no special obligation of avoiding a remote occasion, provided one has a firm will not to sin in it. - But under grave obligation a proximate and free occasion of sinning gravely is commanded to be fled, unless, without temerity, you prefer to render it remote by suitable means. - Because of the frequency of occasions, which would make the matter most burdensome, and because of the lesser moment of the matter, flight from the proximate occasion of venial sin does not seem to be commanded under venial obligation, unless nevertheless, as Lehmkuhl II, 621 wills, you undergo the danger rashly, or without utility. This especially holds concerning those venial sins which prepare mortal sins. Besides, at least venial will it be to approach, without relative necessity, occasions not yet strictly proximate of graver sin. But he who is living in a necessary proximate occasion of sinning even gravely, or who is compelled to approach such an occasion, is obliged to do this one thing: that he seek remedies by which there is hope that the occasion will become remote. The reason is that, even in a proximate occasion, one does not sin except freely; and because the difficulty of declining the occasion excuses him from admitting the danger, in which he can demand the special help of God.

— II. The reason of the obligation and conclusion. Therefore the genuine reason why a proximate occasion must morally be declined is not that the will of approaching it is repugnant to a serious will not to sin; otherwise we could not remain even in a necessary occasion of sinning. Besides, in a proximate occasion sin is indeed foreseen, but from the will freely then changed, of him who now

elicits a firm purpose, so that flight from the occasion cannot be called a means without which the end can in no way be obtained. But the reason is that the general virtue of prudence imposes on us sufficient positive diligence of taking care that at least the grave duties of any virtue whatever not be derogated. That positive precept is violated by him who remains in a free proximate occasion; it is not violated by him who tolerates a necessary occasion. Therefore he who refuses to abandon a free proximate occasion materially or formally actually sins gravely against the virtue whose duties he thus neglects, in whose sin the general malice against prudence also is contained. And because he actually sins gravely, therefore his purpose of fleeing mortal sins is not universal, as it ought to have been.

In estimating that positive care, the relative gravity of the danger and of the inconvenience to be undergone is to be weighed; therefore the whole doctrine concerning flight from a proximate occasion seems able to be contracted more distinctly into a few points thus.

Conclusion. - A proximate occasion formally is an exterior circumstance which induces a relatively grave danger of sinning. We must decline such a danger, unless we are excused by a proportionate inconvenience, and then we must employ the possible cautions. The variety of opinions makes it that we cannot say the grave obligation to be certain unless the danger is so great that in it fault truly more frequent than victory is to be foreseen.

— III. Corollaries. 1. Before experience of the thing, the gravity of the danger must be measured from what commonly happens, but afterward from the relative effect.

2. He who approaches an occasion of sin does not strictly actively permit sin, which would be intrinsically evil, but temptation, to which afterward he himself will freely resist or yield. Observe, however, that although we ought to hate sin above all things, it has not been imposed on us that above all things we abhor temptation in which we may sin. If it should be revealed to someone that in America he will commit a sin from which in Europe he will abstain, not for that reason will he have to abstain from the American journey. He would certainly have to abstain if it were revealed to him that in America he would lose his soul eternally. For then he also has foreseen the conjunction of death with the state of sin: which has not been placed in his free power, and which from charity toward himself he must altogether avoid.
3. In him who neglects the proximate occasion of sin, the universality of purpose is lacking rather than its efficacy. Yet it can be said that this man lacks the mediate efficacy of purpose, since the positive precept of fleeing occasions has been given for avoiding formal sins.

— What if, in an occasion not strictly physically but morally necessary, the use of remedies seems fruitless, nor are better remedies at hand in the concrete?

Doctors go off into various opinions. Ballerini-Palmieri [1] think that the supposition should rather be denied. Others then deny the obligation of abandoning the occasion by their very silence, indeed in explicit words. For if, so they say, the penitent "could be absolved the first time, he will be able also the second" (2), since sorrow and purpose are no more lacking in the second case than in the first; and because, in a physically necessary occasion, all ought to be content with this present disposition. Almost thus Lugo (3), who inclines to this opinion. Others, not few, then oblige one to abandon the occasion, because formal flight alone from the occasion then gives hope of amendment, and Christ

said: "If your eye scandalizes you, pluck it out and cast it from you," etc. Others, as Suarez (4) and St. Charles (5), deny that a general rule can be given. Gury (6) distinguishes thus: flight from the occasion is to be commanded if it seems practically easier to abandon the occasion than to remain in it without sin. Berardi, in some rare case in which the Confessor, having known the moral (7) fortitude of the penitent, indicates a means proportioned to his strength, thinks that flight from the occasion must be imposed, notwithstanding great inconvenience.

And so we think it must be said thus. As often as the thing seems in some way possible, flight itself from the occasion, or the safer parts, are to be urged to be followed by every effort. And unless a very grave inconvenience stands in the way, this flight seems of itself to have to be imposed: for, with attention to the gravity of spiritual ruin, the occasion now cannot be called necessary but relatively free. Yet with very grave inconvenience of life, fortune, etc., the confessor does not seem able strictly to prescribe material flight from the occasion, since, because of disagreement among authors, the obligation cannot be called certain. Cf. Lugo, *Paen.* d. 25, n. 115. For the rest, cf. tr. *De sacramento Paenitentiae*.

[1] *Opus theol.* V, n. 119. - (2) Tamburini, *Praxis expeditae confessionis*, III, 3, 10. - (3) *Paen.* d. 14, n. 156. - (4) In 3 Part. *De Poenitentia*, d. 32, s. 2. (5) *Instr. Confess.* - (6) *Theol. mor.* II, 631. - (7) *De occasionariis et recidivis*.

— IV. Rule of perfection. Thus far concerning obligation. But Christian charity of its own accord raises the soul to better pursuits. Just as, in the special matter of venereal delectation, there is preached a certain angelic chastity, which keeps every affection loosed from carnal pleasure, then, so far as is fitting and possibility is had, avoids carnal movements even involuntary ones, and keeps itself immune from the contagion of the corruption of the age, so there is had a certain general intention of chastity of mind, which cultivates perfect purity of affection and, yielding nevertheless to no pusillanimity, and refusing no ministry of charity, indeed renders itself, with the help of God's grace, stronger than every temptation; yet again refuses to undergo any temptation for the sake of its own satisfaction; indeed by the sublimity of its own wills and by command over the lower powers, acquired even painfully or through mortification, it strives to diminish the tinder of temptations in the virtuous man himself.

Summary

— I. We are held by an absolute and indispensable obligation of abhorring above all evils moral evil, which is formal sin; but not material evil, since it is not imputed to the will. Wherefore the obligation of fleeing material sin is the very obligation of taking care, in a human manner, for the observance of the law.

II. Concerning the occasion of sin. The occasion of sin is an exterior circumstance which formally induces the danger of sinning. It is divided into proximate and remote. Concerning that notion authors do not plainly agree. For some call proximate that in which a man almost always sins, while for others that is already proximate in which a man frequently sins; others say that a proximate occasion is one in which a man always or at least altogether more frequently sins. Nor are there lacking those who estimate these things mathematically. One occasion is present, continuous, or in being; another disjoined, not continuous, not in being: the former is removed, the latter is not sought. Another is free, which a man can morally abandon; another is that which cannot be abandoned either simply or without great difficulty.

It can be proximate or remote absolutely or relatively, according as it is such when attention is paid to the common reason of men of a definite condition and age, or when attention is paid to the special fragility or firmness of the person. An occasion can be in individual meetings or become such because of frequency; it can regard various sins or only one. But flight from an occasion is distinguished as material, by which the occasion is impeded, or formal, by which the force of temptation is diminished so that from proximate it becomes remote.

Under grave obligation there is commanded flight, at least formal, from a proximate and free occasion of sinning gravely. Under venial obligation free occasions less proximate, or occasions of venial sin itself, are to be warded off when without utility the danger is incurred of sinning venially. In a necessary occasion, there remains only the obligation of seeking remedies for converting the occasion into a remote one.

The true reason of the obligation is the obligation of prudence, which imposes on us sufficient diligence of taking care that at least we do not derogate from the grave duties of virtue. In estimating that positive care, the relative gravity of the sin and of the inconvenience to be undergone is to be weighed.

Wherefore a proximate occasion formally is an exterior circumstance which induces a relatively grave danger of sinning: we must decline this unless we are excused by a proportionate inconvenience, and then we must employ the possible cautions. Because of the various opinions, we cannot say the grave obligation to be certain unless the danger is so great that, in a free occasion, habitual fault, or fault truly more frequent than victory, is to be foreseen.

Corollaries. Before experience, the gravity of the danger will be estimated from what commonly happens. He who approaches an occasion does not actively permit sin but temptation. And in him who does not will to abandon a proximate occasion, rather than an efficacious purpose, a universal one is lacking, since he refuses to fulfill the grave obligation of fleeing the occasion.

Title VI: Concerning Certain Kinds of Sins

Usefulness. To fundamental Theology there pertain certain general indications concerning sins which are of such a nature that their generic explanation helps the understanding of special sins, or permits the logical arrangement of sins. Moreover, there will be two chapters of this title. In the first we shall treat of the subjective notion of certain sins, that is, of internal sins; in the other we shall treat of certain objective notions: that is, of capital sins, of sins against the Holy Spirit, and of sins which call down avenging wraths from heaven.

Chapter I: Concerning Internal Sins

— Notion of the argument. From the definition handed down above, n. 402, from St. Augustine, "a word, or deed, or thing desired," there are distinguished sins of heart, of mouth, and of work. This distinction is formal when the mind and tongue begin a sin which according to itself requires exterior consummation. Then sins of heart and mouth, if they must be estimated separately, are referred to the same objective species as the sin of work, and at the same time differ from it in species, as incomplete from complete (Cf. 1, 2, q. 72 art. 7).

On the contrary, the same distinction is merely material if it concerns a sin which is completed by internal consent, as interior heresy, or by words, as detraction.

For then they are sins simply consummated.

In this place we consider internal sins as incomplete according to themselves, and to be estimated separately.

Those internal sins can be delight, or simple love and complacency, affecting an evil thing or action; desire of the same thing or action; joy concerning a past act.

As we noted above, n. 117, there are some who reserve the name *delight* to delight of sense, so that by the name *joy* they call the delight of the will. We do not speak of fruition of a present thing or action, since this is necessarily one with the consummated sin itself. The things which we said above concerning the honesty of delight are to be compared.

Article I: Concerning Morose Delight

— Notions and varied morality. Delight is called *morose* not from a delay of time (for it can be completed in one moment), but from the deliberate assent of the will.

But it can be terminated either to the work itself, or to the thought of it: to the substance of the work, or to some mode of it.

1. Terminated to the thought-of evil work, for example to homicide, morose delight is according to itself mortal or venial, according as it approves a work gravely or venially evil (1, 2, q. 27 art. 3). But moral specification is drawn from the notes in which the complacency is had. For abstract consideration of the object can strip or clothe the object with certain notes.
2. Conditional delight, at least of the rational order, will not be illicit in itself, if the condition removes the disorder.

At least of the rational order, I say: for delight of the sensitive appetite, which follows the phantasm of the represented thing, affects the object as it is in itself. Wherefore, if the object cannot be good except by placing a certain condition which now is lacking, as is carnal intercourse of an unmarried person, the sensitive delight itself will be illicit. Therefore, although, because of the danger of evil commotion, this ought rather to be avoided, intellectual delight concerning carnal intercourse with some person, under that condition "if she were the spouse of the one delighting," objectively is not

dishonorable; but delight of the sensitive appetite would be venereal commotion, which is prohibited under grave obligation to those not married. Cf. our *De castitate*, n. 367, 368.

That evil sensitive delight is had concerning a venereal act, concerning vengeance, concerning theft [1]. Yet this difference is present among the three delights: that the first and third consist rather in the sweet commotion of the subject enjoying, with delights or goods represented, while the other is rather drawn from the person over whom triumph is sought by vengeance. Whence the first and third, but not the other, can easily be without affection to the object.

3. Delight in the thought of an evil thing, but not in the evil work, is not evil according to itself: according to the end, usefulness, and mode, it can be evil or good. Thus a magistrate honorably thinks again about an offense so that he may punish it; a preacher, so that he may rebuke it.
4. Delight in the artful and industrious mode by which an evil thing is conceived to have been done is not about an evil object, and therefore of itself is not to be blamed.

[1] Sanchez, *Decal*. l. 1, c. 2, n. 35.

— Specification. Morose delight is specified by the object. By the object, I say, as it is apprehended and delights. Yet how, in a venereal matter, that which is accustomed to be accused as morose delight or complacency in shameful phantasms is rather consent into the excited venereal commotion, and therefore marks a sin of solitary action more than morose delight properly so called, cf. *De castitate et vitiis oppositis*, n. 266. There also we treat of the obligation of avoiding carnal delights or of repressing movements spontaneously arisen.

Article II: Concerning Desires

— Notion and morality of desire. Desire, as we saw above, carries with itself some intention of execution; or, besides love, it says some intention, absolute or conditional.

1. Absolute desire, by which the will consents into a sin to be perpetrated at some time, necessarily participates in the theological and moral species of the exterior act toward which it is borne. This is clear from St. Matt. 5, 28 itself: "Whoever shall have looked upon a woman to lust after her, has already committed adultery with her in his heart." And the reason is manifest: an interior act draws its goodness and malice from the external act, as from its object.
2. Conditional desire will be sinful or not, according as the malice remains in the object or is taken away from it. The reason is that although conditional desire effects nothing exterior, nevertheless it places in the will an affection for the action: therefore of what sort the fault would be to execute it, of that sort it will be to love it.

Wherefore, made under the condition "if it were not prohibited," or in the state in which these acts are lawful, desires concerning things prohibited by positive law alone are innocent in themselves: I would eat meat on Friday, unless the Church forbade it; concerning things lawful by natural law in some case or state: I would kill Peter, if God commanded it to me; I would hang a thief, if I were a judge; I would marry a wife, unless I were a priest. Yet observe that these idle desires become dangerous in many things.

On the contrary, these are evil: if there were no hell, I would commit adultery; if I were not a religious, I would fornicate; if I had no account of my state, I would avenge an injury, I would kill you; indeed also these others (although some perhaps have contradicted): if it were not a sin, I would fornicate, I would despoil the rich, etc. Provided, however, that by all these you signify a present voluntary affection, and not merely a natural propensity or that which in another age, in another state, in another religious faith, you would have done.

Article III: Concerning Joys

— Morality of joy. 1. Complacency in an evil action done, or joy concerning a committed sin, necessarily participates in its theological and moral malice.

2. Joy concerning a work evil according to itself, but which, because of sleep, ignorance, drunkenness, was without fault, will sometimes but not always be excused. If the work was not a material sin, the object will be honorable: as if someone rejoices concerning a nocturnal pollution by which daytime temptations are hindered. But if it was a material sin, for example pollution procured by touches in sleep, in order that you may be able to rejoice about that act, the same cause is required on account of which you could permit it. That is, in order that you may licitly rejoice about that action because of the good effect, it is necessary that the good effect have proportion to the evil which is always a material transgression of the law.

Moreover, according to the variety of the precept, fault will vary in degree. Thus joy concerning a precept of abstinence violated without fault will be at most venial, even if you do not consider the proportion of the good effect. In this matter Innocent XI deservedly condemned this prop. 15: "It is lawful for a son to rejoice concerning the parricide of a parent, perpetrated by himself in drunkenness, because of the great riches thence obtained by inheritance."

3. Joy concerning the good effect following from an evil work is not about an evil object, and therefore is not to be charged as a sin. Thus we conceive a most honorable joy concerning the glory of the martyrs, concerning our redemption consummated through the crime of the Jews, concerning public peace after the death of a tyrant.

This holds of itself even if the effect flowed from one's own sin, provided you detest the cause: thus concerning a fault which has been the occasion of penance. But such joy will sometimes be dangerous.

— What if you rejoice concerning a physical evil. Concerning the ruin, sickness, death of a neighbor, or concerning his evil that is not moral, it will be lawful to be delighted, and to the same extent it will be right to wish these things for someone, insofar as this is congruent with the order of charity; therefore, insofar as his temporal evil "is an impediment of the evils of another whom one is more bound to love, or of the community or Church," or "insofar as through the evil of punishment the evil of his fault is frequently impeded" (S. Th. 3 S. d. 30, q. 1 art. 1 ad 4). But one must beware lest, "when we pursue our own hatreds, we be deceived under the appearance of another's utility" (St. Greg. M., *Moral.* 22, c. 11, n. 23).

— You ask, how is boasting about sin, and sadness concerning good, to be estimated?

1. True boasting, not fictitious boasting, superadds to joy a glorying concerning an offense of God and scandal.

Fictitious boasting, for example from human respect, besides a lie, contains malice of itself grave, in grave matter, against the obligation of Christian profession.

2. Sadness concerning the trouble of a good work, or concerning a good work as troublesome, is commonly only venial torpor, unless it generates a true aversion from the thing itself, according to itself, or induces grave danger of omitting a work owed under grave obligation.

Yet sadness concerning divine friendship itself is condemned as mortal sloth, because it must be preserved with struggle; or concerning a vocation to divine beatitude, to be acquired through labors. Cf. Lehmk. I, 359.

Summary

— I. Interior acts which are directed to a complete external act are often one sin with the complete act. If they must be estimated separately, they are in the moral species of the complete act, yet they differ from it in species on account of this other notion: that they are incomplete, begun. Here we consider incomplete acts, omitting fruition, which is necessarily one with the consummated act.

II. Morose delight, or simple deliberate complacency in an evil object, participates in the species and gravity of this object, if it is absolute. If it is conditional and of the rational order, its morality will depend on the nature and force of the condition added. But if it is a delight of the sensitive appetite, since it follows the phantasm, which is concerning the concrete thing, it regards the object as it is in the concrete. Wherefore sensitive delight concerning copulation with an unmarried person will necessarily be evil venereal delight. Intellectual delight concerning copulation with an unmarried person under this condition: if she were one's own spouse, will be dangerous, but not objectively dishonorable. Thought of an evil thing can be good, evil, or indifferent; thence the delight will have to be estimated. Delight concerning the mode in which an evil thing has been done is not necessarily evil. Morose delight is specified by the object. But, in a venereal matter, by this name there is for the most part designated consent into a present carnal commotion, so that it is rather a consummated sin of solitary luxury, for which imagination was the instrument.

III. Absolute desire necessarily participates in the species, both moral and theological, of the exterior act. Conditional desire will be sinful or not, according as the affection which the inefficacious desire places in the will is honorable or not. Wherefore the true desire: I would eat meat unless it were forbidden, will be honorable; but this will be dishonorable: if it were not a sin, I would fornicate.

IV. Joy concerning a committed sin necessarily participates in its moral and theological malice. Joy concerning a work evil according to itself, but which, because of a subjective condition, was without fault, will be dishonorable if it was a material sin, unless there was a proportionate cause on account of which it could be permitted. According to the gravity of the precept, the fault will be venial or mortal. Thus joy concerning a violated precept of abstinence without fault will be only venial. Joy concerning a good effect is not of itself sinful, even if the effect follows sin. Joy concerning a non-moral evil of the neighbor will be excused insofar as it is not repugnant to the order of charity.

V. True boasting adds to joy glorying concerning an offense of God and scandal. Fictitious boasting, of itself, contains grave malice, in grave matter, against the profession of Christian life. Sadness concerning a good work as troublesome commonly is nothing except venial torpor, provided that it is not concerning divine friendship itself, because it must be preserved with struggle, or concerning beatitude to be acquired laboriously.

Chapter II: Concerning Certain Objective Notions of Sins

Article I: Concerning Capital Sins

§ 1. General Notions

— I. Notion of a capital sin. 1. From remote antiquity, Christians were taught to turn their mind not only to passing acts, but especially to consider habitual dispositions and propensities, which break forth into acts or are generated by acts. Did not the Apostle himself exhort the Galatians thus: "Walk in the spirit and you will not fulfill the desires of the flesh" [1]; and the Philippians: "For have this mind in you which also was in Christ Jesus" (2); and give this supreme rule to the Corinthians: "Let all your things be done in charity" (3)? And many other passages can be alleged by which care for habitual disposition as the source of good works is commended with great force.

But there are also inclinations favoring sins and vices. Concerning these ecclesiastical writers and the holy Fathers began to discourse and to indicate them in a greater or lesser number, until the authority of St. Gregory the Great obtained that seven capital sins were commonly numbered.

Therefore nothing revealed or so sacred is to be placed in that sevenfold number: St. Antoninus himself [1] admitted eight or nine capital sins.

2. Therefore capital vices are special vices, not necessarily graver than others, indeed not necessarily mortal, but whose ends have certain primary reasons of moving the appetite, so that for the sake of pursuing them man does many things, both good and evil, and thus is led into several sins (2).

And so they can be considered in two ways: either as sources of other sins, or as formally capital; or as special sins. Under the former respect alone do they pertain to fundamental or general theology. Yet authors are accustomed to use this as an occasion to add certain useful things concerning the individual sins, considered in themselves, lest afterward they should seem as it were to handle the same argument twice. To this custom we shall accommodate our own treatise.

[1] Gal. 5, 16. - (2) Phil. 2, 5. - (3) 1 Cor. 16, 14.

[1] *Summa aurea* p. 2, t. 1-9. - (2) Cf. *Summa* 1, 2, q. 84 art. 4, c.; 2, 2, q. 118 art. 7; q. 132, art. 4, ad 3.

— II. Division. According to St. Thomas [3], capital vices are of a twofold notion:

1. Some are heads, the first origin of all sins, and they are two: cupidity and pride.

Concerning cupidity the Apostle said (4): "The root of all evils is cupidity." This already appears true if you take cupidity for the appetite for riches. For riches are the means of pursuing all temporal goods; but sin arises "from the appetite of a changeable good" (5). And it is more manifest if you oppose cupidity, as the pursuit of one's own good as such or as quasi-separated, to charity by which we love all and ourselves in God. In every sin there lies hidden a certain "egoism."

Concerning pride Sirach 10, 15 says: "The beginning of all sin is pride," because, as St. Thomas teaches [1], the end which man intends in temporal appetitions is a certain singular perfection and excellence of himself. Or more simply it can be said that pride, as contrary to humility, radically repudiates every subjection to law, and therefore all impediments are removed which could call back or retard the soul from following its own cupidity. But pride is described as an inordinate appetite of one's own excellence. Perfect pride, according to Augustine, says love of self even to contempt of God (2).

2. Others, which are manifestations or fruits of those two roots, have the notion of proximate origin with respect to several sins (3). That is, considering less the peculiar disposition of the sinner, which varies too much, than the natural and mutual relation of ends, they have final causality with respect to several sins.

[3] 1, 2, q. 84 art. 3, ad 1. - (4) 1 Tim. c. ult. 10. - (5) S. Th. l. c.

[1] Ibid. art. 2. - (2) Cf. *De civ. Dei*, L. 14, c. 28 (P. L. 41, 436). - (3) 1, 2, q. 84, art. 3, ad 1.

— III. Explanation. St. Thomas, art. 4, hands down this explanation of the sevenfold number, which is sought from the threefold good which man principally seeks, and the twofold yoke of evil with which good is joined. Those three positive and inordinate pursuits are: of honor and praise through vainglory; of bodily delight through gluttony and luxury; of exterior goods through avarice. But through sloth we flee the labor with which one's own good is joined; through envy, however, another's good insofar as it stands in the way of our excellence; but if this is done through insurrection toward revenge, anger is had.

By the indication of these vices we are also taught what dispositions, in the spiritual combat, we have to fight down. They are: love of glory or human praise, which is cultivated by pride; love of exterior goods, which avarice nourishes; love of delights, which luxury and gluttony betray; self-love, which begets envy; love of one's own honor, which excites anger; love of one's own convenience, to which sloth yields.

The individual vices are designated, each by its own first letter, and are numbered in the customary order by the word *Saligia* (Noldin, *Princ.*, n. 335).

§ 2. Concerning Pride or Vainglory

— Notion. 1. An inordinate appetite of one's own excellence, which is the generic definition of pride, can be of one repudiating subjection, and this is pride of perfect reason, mortal from its kind, and the beginning of every sin; or it is of him who does not refuse to be subject, but with too great affection wills to excel, is too complacent in his own merit, true or supposed; it is an inordinate mode of pursuing one's own excellence. This is imperfect pride, venial, and a special capital vice.

2. It is a capital vice insofar as it begets presumption, ambition, vainglory.

Presumption is, in this place - for another presumption is opposed to hope - the appetite of undertaking something beyond one's powers. Venial from its kind, it becomes mortal if it turns out gravely harmful.

Ambition is an inordinate appetite of dignity and honor. It is venial, but becomes mortal by reason of the matter, of the means employed, or of harm effected.

Vainglory inordinately desires and seeks the manifestation of one's own excellence.

Vainglory of this sort is sought from an evil, false, fictitious thing, or one disproportionate to the intention; or among those who do not judge well concerning the thing; or without a due end. Venial of itself, it becomes mortal accidentally, as if it leads to boasting concerning a mortally evil thing. Cf. Sanchez, *Decal.* l. 1, c. 3, n. 4 ff.

3. Opposite vice. Those excesses are opposed to magnanimity, from which, also, by defect, one recedes through pusillanimity. By this someone, too distrustful of himself, declines honors, glory, or an office of which he is worthy. The fault is venial; it becomes mortal if you decline to assume or carry out what you were bound to furnish under mortal obligation.

— Opposite virtue. Magnanimity raises the soul to doing great things, or things worthy of great honor, yet proportioned to oneself.

§ 3. Concerning Avarice

— Notion. 1. Avarice is the inordinate appetite of temporal things. Venial from its kind, it becomes mortal if because of it grave violations of the law are committed.

2. It is a capital vice insofar as it begets: hardness of heart, or too great an application to acquiring or conserving riches, with an empty and vain fear lest they not be acquired or be lost; violence; fallacy, which is deceit in words; fraud, which is deceit in deeds; betrayal, which is a harmful deception contrary to faith given. Persons, goods, secrets can be betrayed. Fraud and betrayal are mortal from their kind.

3. The opposite vice of prodigality is defective in conserving goods and excessive in expending them: it is venial from its kind.

— Opposite virtue. Liberality, midway between both vices, uses riches well, especially by expending them for others.

§ 4. Concerning Luxury

— Notion. 1. Luxury is the inordinate appetite of venereal things, concerning which elsewhere expressly.

2. As a capital vice, it begets in the intellect: blindness of mind, alienated from heavenly thoughts; precipitation of one acting without counsel; inconsideration of one acting, which things disgrace his state or person; inconstancy in good purposes. But in the will of the luxurious person there grows false love of self, because of the custom of referring all things to oneself; hatred of God the avenger of sins is prepared; affection of the present age is fostered from inordinate fear of death. The four latter effects, but not the former, are grave from their kind.

The opposite virtue is chastity.

§ 5. Concerning Envy

— Notion. 1. Envy is sadness concerning another's good, insofar as that good is a diminishment of one's own excellence. It is directly opposed to charity, which rejoices concerning the neighbor's good; and it is accustomed to be conceived not toward those who excel us from afar, but toward equals or those a little superior. Mortal from its kind, because of imperfection of the act or the smallness of the good concerning which one is sad, it will be only venial.

Therefore it is not envy if you are sad concerning another's good, a) because from it you fear harm to yourself or to others: this is fear; b) because we lack the good which the other has, so that we do not grieve formally because it belongs to another: this is emulation, zeal; c) because the other is unworthy: this is indignation. These three can be ordered and good, or also inordinate and graver evils.

But it is envy properly so called if you apprehend the very increase of another's excellence as if it were an evil to you, and for this reason are pained that the other grows in excellence and thus becomes superior to you.

The sin of envy is easily committed by the ambitious and by women.

N.B. To curse the day on which someone was born, on which he took a wife, from pain because he was born, can be a simple manifestation of sadness concerning the evils which arose on that occasion: which is no sin or only a slight one. But it would be grave irreverence toward God to carp at the dispositions of divine Providence; and it would be gravely opposed to charity truly to wish grave evil either to oneself or to another.

2. As a capital vice, envy begets hatred, detraction, joy concerning the evil of the neighbor, whispering, that is, evil speaking concerning the neighbor, for the removal of his friendship with others. The whisperer ought to strive to restore that friendship.

The opposite virtue is charity, by which we rejoice concerning another's good as concerning our own.

§ 6. Concerning Gluttony

Besides the general consideration of gluttony, certain things concerning drunkenness occur to be said particularly.

I. - Concerning Gluttony in General

— Notion. 1. Gluttony is the inordinate appetite of food and drink. But inordinateness is committed in five ways: 1. By eating before the time; 2. Things too exquisite; 3. More than is just; 4. Voraciously; 5. Things prepared too elaborately; or more briefly, by eating "too hastily, sumptuously, too much, eagerly, studiously" (2, 2, q. 148 art. 4).

This vice is opposed to abstinence.

Excess in food and in drink is called *crapula*.

Gluttony from its own kind is a sin only venial, because the glutton sins only in the mode by which he refers food and drink to man's good, which truly have an order to that end. Therefore it will be venial to fill oneself with food or drink even to vomiting; venial, to procure vomiting in order to dine or drink again. *Crapula* becomes mortal by which the law of the Church is violated; which, in grave matter, impedes the duties of one's state; which gravely harms health.

Already above, where pleasure was treated, the reason was given why, among the propositions condemned by Innocent XI, this is found, n. 8: "To eat and drink even to satiety for pleasure alone is not a sin, provided it does not harm health, because the appetite can licitly enjoy its own acts."

It is clear to all that one who procures salutary vomiting does not sin at all (2, 2, q. 150 art. 2).

2. As a capital vice, gluttony begets, in the soul: dullness of mind; foolish gladness, that is, which moves one to sing, say, and do dishonorable things; loquacity; buffoonery. Foolish gladness is in the appetite; loquacity in words; buffoonery in words and gestures: from levity, in order to excite laughter, words are said which are little decent, and uncivil things are done.

But in the body, gluttony begets uncleanness, vomiting, emission of semen; this is not imputed, if it was merely foreseen as naturally going to follow after *crapula*, without danger of consent.

— You ask whether one sins or not who feeds on human flesh or blood?

Without a just cause of medicine or of appeasing hunger, that is repugnant to the piety owed to the dead. Its guilt is revealed to us by the very instinct of nature, which abhors it. To preserve life in this way is permitted, but not commanded.

II. - Concerning Drunkenness

— I. Notion. Full drunkenness designates the state of him who, because of drink or a similar cause, is immediately deprived of the use of reason with proximate incapacity of recovering that use. Immediately, I say, insofar as natural sleep is not interposed. With this, moreover, whether naturally or accidentally shaken off, morally the use of reason is restored at once.

During the time in which someone is drunk, the superior faculty is morally suppressed, since it can now direct nothing. Physiology itself teaches us that the drunken man is withdrawn from higher associations and placed under the rule of lower ones. Wherefore this privation of the use of reason is to be assimilated to a certain temporary or reparable mutilation.

II. Morality. As such, the intention or choice of drunkenness will be intrinsically illicit, unless it is morally necessary for the good of the whole, for example, for recovering health.

That also will be illicit which is permitted without a proportionate cause.

And of itself, this sin is grave. "For that a man without necessity render himself powerless to use reason, through which man is ordered toward God and avoids many occurring sins, from the mere pleasure of wine, is expressly contrary to virtue" [1]. That is, he perturbs order in himself who takes away from himself the very principle of ordination, or reason, the directive faculty. And therefore it will be grave if material sins are foreseen, if the necessity is foreseen of having the use of the superior faculty unimpeded; or if, because of the time through which it lasts, there has been a notable unnatural interruption of rational life.

Whether by excessive drink or by some other means you deprive yourself of the use of reason and of proximate capacity to recover it, drunkenness remains specifically the same (contrary to what Lacroix thinks, l. 5, n. 316); but, in the former case, there will accede the sin of gluttony, venial according to itself.

But is drunkenness grave in its whole kind, or does it admit smallness of matter? Several, whom St. Alphonsus alleges without censure, think that drunkenness which deprives of reason for a short time, that is, not beyond an hour, is not mortal. Lehmkuhl [1], Genicot-Salsmans (2), Noldin (3) think the same; but they do not excuse from grave sin him who, before he is deprived of reason, commits himself to sleep, since sleep does not prevent drunkenness. St. Thomas himself seems to admit smallness of matter. For he uses this formula: "Drunkenness, speaking of itself, is a mortal sin"; and he indicates the reason: "He sins mortally, committing himself to the danger of sin" (4). Therefore if that danger is not present, the alleged reason of grave sin also will be absent (5).

Observe that the gravity of the sin flows not from the quantity of drink but from the effect of drunkenness. Wherefore not even a few drinks are licit by which you know that you are going to be drunk. But a proportionate cause will more easily be able to be present here.

Corollary. Therefore it will be licit to make oneself drunk in order to repel disease, according to the counsels of physicians; and in order to lessen or not feel the bitter pains of a surgical operation or of difficult childbirth, especially since that relief may be useful or even necessary to the safety of the patient himself.

Moreover, what, in an intoxicating drink, lessens pain, and what produces drunkenness, has not yet been able to be defined accurately; nevertheless this seems able to be said: that relief is not sought from full drunkenness itself, or from an adequate cause of drunkenness; which is enough for drunkenness to be considered as merely permitted because of a just cause.

[1] 1, 2, q. 88 art. 5 ad 1.

[1] I, 892. - (2) I, 183. - (3) *Princ.* 343. - (4) *Summa*, 2, 2, q. 150 art. 2. - (5) Earlier, St. Thomas had classed even frequent drunkenness, according to itself, among sins venial from their own kind. *QQ. De Malo*, q. 2 art. 8 ad 3 and q. 7, art. 5 ad 1.

— Concerning the use of morphine. When no particular pains are to be soothed, it is not licit, for cutting off the mere anxieties of agony, to deprive the dying man, for example by the aid of morphine, of sense and reason and thus to hasten the end or terminus of rational life. That cause is not sufficient; and that suppression of reason deprives the sick man of many merits. But if he bears a soul not yet prepared for death, and positive hope of preparation is had, necessary penance is impeded by a wicked crime. Witnesses ought to resist that sin as much as they can.

But if at the same time bitter pains are to be soothed, although, even then, theologians are accustomed to answer with the same severity, we incline toward the more benign side whenever no preparation for death is impeded. For then this cannot be objected, that it is wrong to break off rational life before the hour appointed by divine Providence: for this cessation of rational life is not intended but merely permitted. And since the man is prepared, and pains can indeed be an occasion of merit but also of sin, the cause seems proportionate. Lehmkuhl (1), however, does not excuse the very silence of a witness except when the matter concerns a dying man well prepared, and one who from the continued use of reason is situated in danger of grave sin. Noldin (2) speaks with equal

severity. Gen.-Sals. (3) speaks more mildly, rightly warning that morphine then cannot be given without at least the presumed consent of the dying man.

— Another's drunkenness. Another can be made drunk in two ways: either in such a way that he himself has sinned formally, or in such a way that without his own fault he is made drunk.

1. The former mode is certainly illicit, if the other is not already determined toward a greater sin: suppose, toward homicide. But if he has been determined toward a greater evil, the question returns whether or not you can persuade another to a lesser sin. This, when the sin is of another kind, with the more probable opinion we have denied to be licit. Wherefore Laymann [1], consequently, reproves it. But according to St. Alphonsus (2), Lehmkuhl (3), the more benign opinion is probable, which, for example, Lessius defends, l. 4, c. 34, n. 32.
2. But he who by fraud and without knowing it is induced into drunkenness does not even sin materially, but suffers a physical evil. Therefore, one detained in prison, who has the right of escaping from prison, can of itself employ this as a means of just defense; so can an upright citizen, to impede the vote of an unjust law, or to detect a traitor.

Moreover, more easily, from other grave causes, it is right to place an occasion of drunkenness, even formal drunkenness. Lehmk. l. c. after St. Alph. l. 5, n. 58.

[1] L. 3, n. 4, n. G. - (2) *Theol. mor.* l. 5, n. 77. - (3) I, 894.

— Imperfect drunkenness, which does not substantially deprive of the use of reason, is a venial fault. Wherefore for a lesser cause, varying according to the very degree of drunkenness, it will be able to be permitted, indeed chosen, for repelling a person's evil.

Therefore, to repel sadness and melancholy, they allow that you drink even to cheerfulness.

— Signs of perfect drunkenness (probable but not infallible) are given as these: If someone does not remember what he said, did, how or when he was led home; if he has done altogether unusual things, for example, contrary to custom has spoken shameful things, has disturbed the house, beaten his wife, etc. Cf. Lessius, l. 4, c. 3, n. 30; Lehmk. I, 892.

But as long as he continues to discern between evil and good, a man is not yet judged to be perfectly drunk, although he bears his imagination somewhat disturbed, his tongue stammers, his feet totter, his eyes see double, the house seems to turn around for him, vomiting follows. Since quite many then think that a grave sin has been committed by them, they are prudently to be untaught this.

— Subjective guilt. Quite many are excused from grave sin, because they did not notice the danger of drunkenness, and they were seized by wine, whether, going out into the air, they then first experienced its force, or whether they judged prudently enough that they could still tolerate a little draught without harm. But, after contrary experience, this excuse is taken away from them.

— Evils committed in drunkenness are imputed in their culpable cause, if, as sufficiently connected, they were foreseen and remained evils. Thus insults, in circumstances where they rather move laughter, lack the force of injuring or their own effect, and therefore cease to be true insults.

What is to be said concerning blasphemies! Some excuse drunken persons from the sin of blasphemy, because it is of the nature of blasphemy that it be uttered knowingly. Thus Vasquez [1], the

Salmanticenses (2); and, if the blasphemies are not extraordinary, but middling and common, Gobat (3). Most judge them guilty, because the objective signification is preserved in the words: thus Sanchez; or because drunk persons preserve true concepts in such a way that the whole essence of material blasphemy is preserved: thus Ballerini on Gury, I, 183, note 6.

A distinction seems to us to have to be used. Often drunken persons utter blasphemies almost mechanically and without advertence to the signification: when those standing by observe this, not only subjective but also objective signification seems to perish. But if, having been corrected in this way, they assail God with insults, the insult will remain imputable in the cause, if it was at least confusedly foreseen.

Nevertheless it will always be wrong to provoke drunken persons to blasphemies. For if you have directly provoked them, you seem to blaspheme through them as through an instrument: which is gravely to be blamed; if only indirectly, at least venial irreverence toward God will subsist, whose name is usurped in a vain and rather hateful way. Cf. Laymann, l. 1, tr. 4, c. 9 n. 3, and our *Questions concerning Religion*, n. 169.

[1] In 1, 2, disp. 76, n. 11. - (2) Tr. 25, c. 2, n. 30.31. - (3) *Opera moralia*, tr. 5, c. 19, n. 34-39. - (4) *Decal.* l. 1, c. 16, n. 44.

— Remedies. The healing of a drunken man, or of one who is frequently made drunk, is judged very difficult and laborious. And already St. Augustine inveighs against such persons with very grave words. (Cf. ep. 29, n. 5, P. L. 33,116; sermon 151, P. L. 38, 816). And a resolution of temperance or moderate drinking often remains ineffective for them, so that only complete abstinence from intoxicating liquor establishes hope of health. Wherefore those certainly are to be praised who, for this cause, establish and govern societies called temperance societies, and voluntarily, without any personal necessity, abstain from every alcoholic drink, so that they can draw by their own example others who need such a remedy [1]. Moreover, there exist in various regions, for example in Switzerland, special institutes where drunkards are treated by a scientific method. Concerning the conquering of drunkenness and immoderate drinking of alcohol, cf. Noldin, *Princ.* 347. 348.

[1] Concerning the reason and opportunity of complete abstinence, cf. writings by P. Lehmkuhl, S.I. in *Linzer Quartalschrift*, 1917, p. 97 ff. and 1918, p. 13 ff.; and by R. P. Prummer, O. Pr., 1917, p. 322 ff.

§ 7. Concerning Anger

— Notion. 1. The vice of anger, to be distinguished from the passion, is an inordinate appetite of revenge. Revenge, however, is made by the infliction of punishment on account of injustice, and toward this it states a proportion (1, 2, q. 46, art. 6).

But that inordinate appetite can be: 1. On the part of the mode of becoming angry, as if you should grow too heated interiorly, or exteriorly reveal that heat too much by signs; 2. On the part of the object, as if you desire revenge without a just cause, or greater than is just, or to be carried out by your own authority, or finally, if you do not desire it as just, that is, for the due end of preserving justice and correction, but for satisfying your malevolent soul.

Inordinateness on the part of the mode is of itself venial; the other is of itself mortal.

2. As a capital vice, anger begets: indignation, by which someone judges that he is being treated unworthily by someone, which of itself is venial; swelling of mind, by which someone

morosely thinks out diverse ways of revenge, whence also the soul grows heated: the malice is measured by the quality of the revenge sought; clamor, when the angry man, lifting up his voice, pours forth many things inordinately and confusedly, which is commonly venial; blasphemy; insult, mortal in its kind, by which someone wills to dishonor the neighbor, while he casts some evil at him; malediction, by which someone wishes or imprecates evil to another. This will be mortal: a) if the evil is truly wished: often only anger is manifested; b) if it is wished with perfect deliberation; c) if the evil wished is grave (St. Alph. 5,83). Finally, it begets quarrels. If they do not exceed measure, they are venial, as are light fights. These are properly sins on the part of the one beginning the quarrel: for the other can defend himself, with the moderation of blameless defense.

— Concerning just anger. An ordered appetite of revenge, as when superiors are angry at the faults of subjects and punish them with penalties, is not a sin, but is called anger through zeal. "Severity is inflexible concerning the infliction of penalties, when right reason requires this" (2, 2, q. 157 art. 2).

Neither just anger nor severity is contrary to meekness and clemency. For meekness restrains only the excesses of anger; clemency, through a certain *epikeia*, tempers penalties established by law according to right reason (2, 2, q. 157 art. 2).

§ 8. Concerning Sloth

— 1. Notion. Sloth denotes weariness of soul, and it can be taken generally for every relaxation of soul in exercising the virtues, because they have labor joined to them; and particularly for sadness and weariness concerning divine friendship, because it must be preserved through laborious works of the virtues; and then it is a special vice. The former becomes mortal when for that reason a grave affirmative or negative precept is violated; the latter directly repugns the charity of God, so that it is grave from its whole kind.

Sometimes they distinguish natural sloth, or weariness concerning bodily labor, and spiritual sloth, or weariness concerning laborious virtues. As is clear, flight from bodily labor, when it is culpable, is referred to spiritual sloth.

Although in common speech general sloth is rather taken for the capital vice, and St. Gregory the Great himself numbers general sadness among the capital vices, theologians nevertheless reserve the name of the capital vice of sloth for the special one.

2. By St. Gregory himself [1], as daughters of sadness, there were already indicated:

Malice, by which someone has hatred for spiritual goods and would wish them not to exist; or by which he repents of having done well or fulfilled what he owed; or by which he contemns God's benefit, wishing that he had not been born, had not known Christ, etc.: it is mortal from its own kind;

Pusillanimity and despair concerning salvation;

Rancor, by which those are wearisome who induce him toward spiritual things;

Torpor, when good things are done without due fervor;

Wandering of mind in spiritual exercises: when it is done through thought, it is called curiosity; through speech, it is called verbosity; through restlessness, it is called inquietude: these are commonly venial.

N.B. Take care lest you confuse with mortal sloth the rather dangerous indeed, but of itself not mortal, weariness concerning a priesthood undertaken or a religious life entered, while there remains, however, the will of fulfilling the duties of either state.

[1] P. L. 76, 658.

— You ask whether labor is commanded to man?

By the words of Genesis, 3, 17. 18, a hard necessity is proclaimed rather than a true precept is promulgated. And some labor must be undertaken by all in order to flee sins, to exercise commanded acts of virtue, and to meet various necessities.

Therefore various duties indirectly generate for all men some obligation of laboring, and for most a sufficiently burdensome obligation, especially if among the duties you do not omit charity, which, when the matter concerns averting grave common harm, obliges even with notable inconvenience. And today, in our European societies, whether by reason of scandal, or by reason of common harm to be warded off, he who, abounding in goods, exercises charity by no work of his own cannot be excused from every sin.

But a proper and direct duty of laboring is not demonstrated; and social cooperation is generally to be obtained by much exhortation rather than by terror of divine anger. Cf. Gen.-Salsmans, I, 365.

Article II: Concerning Sins against the Holy Spirit

— Notions. In the dogmatic treatise concerning Penance, theologians are accustomed laboriously to inquire what sin in Sacred Scripture is stated to be irremissible, as being against the Holy Spirit [1]. That controversy is not ours.

But, relying on various places of St. Augustine, after Peter Lombard (2) and Alexander of Hales, theologians are accustomed to number six sins which are particularly opposed to the Holy Spirit, because they resist more the action of grace. Wherefore they are blotted out with greater difficulty. St. Thomas [3] says that they are remitted as if miraculously.

They are: Presumption; Despair; attack on known (religious) truth; envy concerning grace granted to a brother; obstinacy; impenitence.

Today those are guilty of this sin who enter upon a wicked pact which we can call one concerning final impenitence, when they mutually promise each other assistance for closing to themselves, at the end of life, the way of reconciliation with Christ and the Church.

The discussion will return concerning the two former kinds in the treatise on Hope. The others are understood of themselves.

[1] Cf. St. Matt. 12, 31 ff.; St. Mark 3, 28; St. Luke 12, 10. - (2) 2 Sent., d. 43, 6.

[3] *Summa*, 2, 2, q. 14, art. 3.

Article III: Concerning Sins Which Call for Heavenly Vengeance

— Origin of the opinion. Various places of Sacred Scripture, where a peculiar vengeance is announced as either taken by God or to be feared from Him, led theologians to distinguish four sins as "crying to heaven." From the time of Canisius they are contained in these verses:

The voice of blood and of the Sodomites cries aloud to heaven,

The voice of the oppressed, the wage of labors detained.

And so they are enormities against the individual neighbor: homicide; against the human race: sodomy; against the social good: oppression of the poor, widows, and orphans; the defrauded wage of workers.

[4] Gen. 4, 10; 18, 20 ff.; Exod. 22, 23; Eccli. 35, 18 ff.; Deut. 24, 14 ff.; St. Jas. 5, 4.

Summary

— I. Capital sins are vices not necessarily graver than others or mortal, because of which man is led to several other sins.

Two vices are as it were the heads of all sins: cupidity, whether you take it for the appetite of riches or for the pursuit of one's own good as such; and pride which, if it is perfect, denotes the repudiation of all subjection.

But other sins which are called capital have the nature of proximate origin with respect to several sins; these, by the custom of today, are numbered seven.

1. Pride, or rather vainglory, insofar as it denotes an inordinate excessive mode of pursuing one's own excellence. It is of itself venial; it begets presumption (an appetite of undertaking something beyond one's powers), ambition, and vain glory. The contrary defect is pusillanimity; the middle is the virtue of magnanimity.
2. Avarice, or the inordinate appetite of temporal things, venial from its own kind, begets hardness of heart, gives birth to violence, fallacies, frauds, and betrayal. To this is opposed the vice of prodigality. The middle is liberality.
3. Luxury, or the inordinate appetite of venereal pleasure, concerning which elsewhere. It begets in the intellect blindness of mind, the precipitation of one acting without counsel, the inconsideration of one doing things that are disgraceful, and inconstancy in good purposes. In the will false love of self grows, hatred of God is prepared, affection for the present age is fostered.
4. Envy, or sadness concerning another's good, insofar as that is diminutive of one's own excellence: the increase of another's excellence is apprehended as if one's own evil. It gives birth to hatred, detraction, joy concerning the neighbor's evil, and whispering. Charity is opposed to it.
5. Gluttony, in general, is the inordinate appetite of food and drink. Excess is called *crapula*. Abstinence is opposed to it. From its own kind it is a venial vice. Besides bodily effects, it begets in the soul dullness of mind, foolish gladness, loquacity, buffoonery.

It is repugnant to piety that someone without a just cause should feed on human flesh or blood.

Drunkenness in the special sense, if it is perfect, denotes the voluntary induction of a state in which someone is immediately deprived of the use of reason with proximate incapacity of recovering that use. Since reason is our directive faculty, drunkenness of itself makes a reparable mutilation, which, illicit according to itself, can licitly be intended or chosen for the good of the whole person or body, or permitted for a just and reasonable cause, such as recovering health and the soothing of bitter pains supply. These excluded, that perversion of order, by which the principle of order is withdrawn, is grave in its kind; nevertheless it admits smallness of matter, from the shortness of time and the absence of danger of material sin. For the cutting off of the mere anxieties of agony it is not licit to deprive a dying man, for example by the aid of morphine, of sense and reason, at least when no particular pains are to be put to sleep.

As a means of just defense, another's involuntary drunkenness can be induced; indeed, according to several, even that culpable to the neighbor, if he is determined toward a greater evil.

Imperfect drunkenness is of itself venial. As long as someone continues to discern between evil and good, he is not yet perfectly drunk.

Subjectively, quite many are excused from grave sin, because they did not fully notice the danger of drunkenness. Evils committed in drunkenness are imputed if, as sufficiently connected, they were foreseen and remained evils, that is, material sins. Societies called temperance societies are usefully established for healing drunken persons. For many the sole medicine is complete abstinence from intoxicating drink.

6. Anger is an inordinate appetite of revenge: inordinate on the part of the mode, and this is venial; or on the part of the object, and this is grave in its kind. It begets indignation, swelling of mind, clamors, blasphemies, insults, maledictions, and quarrels. An ordered appetite of revenge is called anger through zeal. Neither such anger nor severity which is inflexible concerning punishments when right reason demands it is opposed to meekness or clemency.
7. Sloth, or weariness of soul, as a capital vice, is not taken for every relaxation of soul in cultivating virtue, but for sadness and weariness concerning divine friendship: then it is mortal from its whole kind. It gives birth to aversion from spiritual goods, pusillanimity and despair concerning salvation, rancor, torpor, and wanderings of mind in spiritual exercises.

A proper and direct precept of laboring is not demonstrated.

II. By the name of sins against the Holy Spirit theologians are accustomed to call six sins which particularly oppose the Holy Spirit, because they resist the action of grace more, and therefore are blotted out with greater difficulty. They are: Presumption, Despair, attack on known truth. Envy concerning grace granted to a brother, Obstinacy. Impenitence.

III. From various places of Sacred Scripture are gathered four sins which peculiarly call for heavenly vengeance. The first, against the individual neighbor, is homicide; the other, against the human race, is sodomy; the third and fourth are against the social good: oppression of the poor, the defrauded wage of workers.

IV. Because of positive or negative cooperation, sins committed by another are also imputed.

Treatise VI: Aids of Human Liberty

Usefulness. Having considered and deplored the vices of our infirmity and malice, it will greatly help, before we enter the parts of special theology, to place before the eyes, in a very brief survey, the aids, both interior and exterior, by which our infirmity is strengthened, so that we may be able to reach the most sublime goal without such great difficulty.

I. - Interior Aids

— I. Aids in general. In the order of elevated and repaired nature, divine munificence infuses into us:

1. Sanctifying grace, as a new nature, which formally makes us just, sons of God, and now brothers of Christ; and it is in us the condition and principle of meriting the kingdom of heaven *de condigno*;
2. Actual grace. Actual grace of God precedes and accompanies the good acts themselves, so that they may be meritorious; and it aids us in overcoming evil temptations and in declining from evil. Therefore the same grace is both elevating and medicinal for us;
3. So that supernaturally good acts may be done connaturally by us, from divine liberality we receive supernatural virtues.

— II. Concerning virtues in particular. 1. Natural and supernatural virtues. Wherefore, in the present economy natural and supernatural virtues must be distinguished.

Supernatural virtues are infused into us; they immediately effect this: that we can do supernatural acts, each of its own kind, connaturally. They do not themselves bestow facility of acting.

On the other hand, natural virtues, which are acquired by the very acts, consist in that facility, in the inclination toward certain acts. Yet in the present order of elevated nature, the good toward which they incline no longer suffices for us. It is natural, or proportioned to nature, while we exist for a good or end which exceeds our nature. Wherefore, in the present order, the same are not virtues except in a diminished way; and they should rather be praised as accidental but most useful complements of the virtues properly so called, which are the infused virtues. The very acts of the infused virtues, as such, insofar as they remove contrary dispositions, contribute indirectly to facility of exercise. But inclination toward supernatural things is had from the gifts of the Holy Spirit.

— 2. Theological virtues. Among infused virtues, those may most of all be called supernatural which are so proper to the present order that nothing would correspond to them in the natural order [1]. These are the theological virtues; while moral virtues would have existed in every order, although otherwise in the natural order and otherwise in the present order.

Wherefore the theological virtues ought not simply to be counted together with the moral virtues, but must be ascribed altogether to a higher order. Through them we participate in the divine life and begin to act it, while infused moral virtues perfect and ennoble our human life. Man elevated is

scarcely conceived without the infusion of the theological virtues, since through their acts alone he immediately reaches God; while even elevated man could have lacked infused moral virtues. The theological virtues are expressly named in Sacred Scripture (e.g., 1 Cor. 13); concerning supernatural moral virtues it is not established that discourse is mixed in the sacred letters. Wherefore it is theologically certain and to be held next to faith that there are three theological virtues, while, in affirming other infused virtues, we rely only on the common opinion of theologians.

Cf. Mazzella, *De virtutibus infusis*, n. 30-32, from Suarez, *De gratia*, who, l. 6, c. 8, n. 14, appeals to Trid., s. VI, c. 7, etc.; Billot, *De virtutibus infusis*.

[1] For in the natural order the object is lacking at which acts would terminate analogically: in that order God would neither reveal Himself, nor promise Himself as to be possessed, nor give Himself as to be loved by a love founded on the communication of His own beatitude. Indeed, there are not lacking those who think it repugnant to the natural order that in it God should reveal anything.

— 3. Moral virtues perfect the principles of our human actions: we call human actions free acts, interior or exterior, which would also have existed in the merely natural order, although otherwise than now. (For this reason they are distinguished from the theological virtues, which give a beginning to actions that are, as it were, divine.) Wherefore their formal object is moral honesty in some created order. The principles which are perfected are powers which are so constituted under the power of the will that they nevertheless have spontaneous acts: over these the will is said to preside politically. But the virtues are perfective insofar as, if they are supernatural or infused, they bestow the capacity of connaturally eliciting acts proportioned to the supernatural end; or insofar as, if they are acquired (virtues today imperfect), they incline toward honest acts.

More strictly those virtues are called moral which reside in the appetite, and in this way they are distinguished from intellectual virtues, whose seat is the intellect. Such is prudence.

What cardinal virtues are. Already from remote antiquity, four moral virtues were distinguished as first or cardinal. They are named in Sacred Scripture [1], they occur in Plato (2), and among the Stoics they are the first virtues: prudence, temperance, courage, justice. By these names there are signified either certain general notes by which every virtue is marked, or four principal virtues to which the others can be referred.

1. For in every virtue there is found discretion of reason, or the note of prudence; an inclination toward doing what ought to be done, which is the note of justice; observance of the middle mode between excess and defect, which pertains to temperance; finally, firmness in pursuing the good: this belongs to fortitude.

Moreover, since a good moral operation has its principle in the right ordering of the practical intellect, is derived from a free determination of the will, and can be impeded by passions, whether concupiscible or irascible, there is no virtue unless it either perfects the intellect for directing well, or the will for acting as it ought, or places order in the passions by repressing their impulses, or confirms the soul against their resistance.

2. And the virtues in which the several aspects among these stand forth are, as it were, heads to which the others are recalled. Now, direction chiefly belongs to command or precept; a perfect debt, to be rendered according to equality, is found in operations which are toward another as

such, for no one strictly owes to himself; the appetites of the greatest pleasures, namely touch and taste, must chiefly be repressed; and the fears of the greatest dangers must be overcome. Therefore prudence, which is a preceptive virtue; justice, which renders right, or what is owed to another on account of his own proper personality; temperance, which moderates the pleasures of taste and touch; and fortitude, which sustains or attacks dangers of death, are cardinal virtues.

[1] Wis. 8, 7. - (2) *Rep.* IV, 441.

— Parts of virtues. Of virtue there are distinguished subjective parts, quasi-potential parts, and quasi-integral parts.

Subjective parts are the species into which virtue, as a kind of genus, is divided. The species ought univocally to participate in the generic notion of virtue, and to differ from one another by a specific difference.

Potential parts are virtues in which the proper notion of some virtue is in some way present, but defectively.

Quasi-integral parts are those things which must be had together in order that the perfect act of a virtue may be constituted. By these that act is composed almost as a body is composed of matter and form. Thus the integral parts of justice are said by St. Thomas (2, 2, q. 79, art. 1) to be to do good and to decline from evil, because justice follows upon a twofold good: not to take away what belongs to another, and positively to render what is due. And it is already an act of justice not to take away what belongs to another.

But take care lest you make less of virtues which, as potential parts, are referred to another. This division is merely logical; and, for example, the nobler virtue of religion is a potential part of justice.

— III. Gifts of the Holy Spirit. The Holy Spirit, who through sanctifying grace dwells in us, brings His gifts to us, as a divine dowry. These are habitual qualities of our soul, by which we are disposed to act according to the motions, both ordinary and extraordinary, of the Holy Spirit.

They are in us, as it were, demonstrative signs of the Holy Spirit; as they are communicated to us after Christ, they are a participation in the fullness of Christ; as habitual qualities of our soul, they are its most precious ornaments; as operative qualities, they are complements of the supernatural virtues, through which we are inclined toward the supernatural end.

Seven gifts of the Holy Spirit are numbered from the Vulgate, Isa. 11, 2. 3: "And the spirit of the Lord shall rest upon him: the spirit of wisdom and of understanding, the spirit of counsel and of fortitude, the spirit of knowledge and of piety, and the spirit of the fear of the Lord shall fill him."

When we act according to the motions of the Holy Spirit, we gather the fruits of the Holy Spirit, which under another respect are called beatitudes. These fruits, by an exemplary enumeration, not an exhaustive one, are numbered as twelve by the Apostle to the Galatians, 5, 22. 23: charity, joy, peace, patience, benignity, goodness, longanimity, meekness, faith, modesty, continence, chastity.

II. - Exterior Aids

— Besides interior aids, divine Providence supplies to us innumerable exterior helps of examples, counsels, circumstances, and events. Among all these, the first place must be assigned to the examples and doctrine of Christ. But among the words of Christ there stand forth the counsels and promises made, for example, to those who leave all things for Him, and to those who exercise works of mercy. And not without merit ought we to extol the often repeated promise of happiness even in this life; of happiness in the very tribulation and persecution. If, deceived by the appearance of false happiness, we do evil things or less good things, nothing is more usefully inculcated to men than the persuasion of the inseparable union and concord between the appetite of the honest good and the appetite of one's own beatitude [1].

"If you know these things, you shall be blessed if you do them" (St. John 13, 17).

[1] The truth of this concord has very recently been shown by Fr. Victor Hostachy, in the lives of the saints: *Joie et saintete. Essai d'etudes d'ames*. Tournai, 1922.

Summary

— I. For attaining the supernatural end, these interior aids are conferred upon us:

1. Sanctifying grace as a new nature, which formally constitutes us just, sons of God, and brothers of Christ.
2. Actual grace of God, which at the same time elevates our actions, and is medicine for healing the wounds of nature.
3. So that acts may be done connaturally, infused supernatural virtues, which are for us as if supernatural powers. Hence they do not give facility of acting.

Some are theological, to which nothing would have corresponded in the natural order; through them we begin to act a truly divine life: Faith, Hope, Charity. Others are moral, which would have existed in every order, though otherwise than now.

By the very exercise of the virtues, even infused ones, we acquire for ourselves a certain facility of acting well. This habit of operating well is an acquired virtue; nevertheless, in the present order, it falls short of the notion of virtue, because it does not incline toward the supernatural end.

Among the moral virtues, from remote antiquity four are distinguished as cardinal: Prudence, Justice, Temperance, Fortitude. Their notes are apprehended in every virtue; at the same time they are special virtues which possess one of those notes peculiarly, to which therefore, in a logical distribution, other virtues can be referred as parts, whether subjective, if they univocally verify the generic note of the cardinal virtue, or potential, if that note is present in them defectively. Yet a virtue which is a potential part can be nobler than the cardinal virtue. Quasi-integral parts of a virtue are those things which must be had together in order that the perfect act of the virtue may be constituted. Thus justice requires that we not violate another's rights and that we positively furnish what is due.

4. The virtues are completed by the gifts of the Holy Spirit, which are infused habitual qualities by which we are prompt to obey the motions, both ordinary and extraordinary, of the Holy

Spirit, and therefore we are inclined toward the supernatural end. Seven are numbered: wisdom, understanding, counsel, fortitude, knowledge, piety, and fear of the Lord.

When we act through those gifts we gather the fruits of the Holy Spirit, which under another respect are also beatitudes.

II. Divine Providence moreover prepares for us exterior aids of examples, counsels, circumstances, but above all the examples and doctrine of Christ. In this doctrine the counsels and promises must especially be attended to by us; above all, however, the often repeated promise of beatitude, already here on earth mysteriously but truly joined with virtue.

Conclusion

— While, after weighing our moral miseries, and the image of God in the sinful man disfigured by iniquity, we meditate on the aids supplied to our liberty, we begin to understand how with the same mouth the Apostle could call himself an unhappy man and grieve [1], report the groaning of the whole creation (2), and again stir us to continual and perpetual joy (3). That in this life we may bear an affection mingled with pious fear and cheerful hope, the considerations brought together persuade us of our own proper neediness, and of the riches which we have in Christ. We grasp more distinctly also in what way the whole evangelical discipline is of humility (4) and magnanimity: of humility, by which we recognize that there is nothing in us; of magnanimity, by which we dare to expect divine things from God. Indeed, "He who was God was made man, about to make gods of those who were men" (5). This the disciple whom Jesus loved was already handing down to us in inspired words: "But as many as received him, he gave them power to be made the sons of God" (6). But if God has given all things to us with the Son (7), justice itself demands that the Son reign in us through those gifts of His.

The multitude of gifts and virtues may be likened with Augustine to an army; but, as the holy Doctor, addressing a Christian, admonished: there is "an army of the emperor who sits within in your mind. For as the emperor through his army does what pleases him; so the Lord Jesus Christ, beginning to dwell in our interior man, that is, in the mind through faith, uses these virtues as His ministers... Through these invisible virtues, the visible members are moved: the feet for walking; but whither? Whither the good will, which serves as a soldier for the good emperor, has moved. The hands for working; but what? What charity has commanded, which has been inspired within by the Holy Spirit [1]."

[1] Rom. 7, 24. - (2) Rom. 8, 22. - (3) Phil. 4, 4. - (4) "Humility, which is almost the one Christian discipline" (St. Augustine, *Sermo* 351, 4 (P. L. 39, 1538)). - (5) St. Augustine, *Sermo* 192 (P. L. 38, 1012). - (6) Gospel of St. John, 1, 12. - (7) Rom. 8, 32.

[1] *In epist. Ioannis*, Tr. 8, 1 (P. L. 35, 2030).

Supplementary Notes

[Editorial note: Supplementary Notes 1 and 2 have also been attached at their referenced places in the body text, after n. 395 and n. 428 respectively.]

1. To n. 395, concerning material sin. There we described the material sin which he commits who acts freely but ignorantly. But another reason of material sin is had when an evil act is done by

him who, on account of madness, sleep, or drunkenness, is not master of himself.

2. To n. 428, concerning the moral specification of sins. Nevertheless, it must not be passed over that complete acts and incomplete acts pertain to one perfect species of sin; but incomplete acts, as such, differ specifically from complete acts. Cf. S. Th. 1, 2, q. 72, art. 7, c. and ad 3.

3. The bibliography is deferred to the last volume.

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Printed at Rome, Italy.

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De Castitate et de Vitiis contrariis, doctrinal and moral treatise, 2nd ed. 1921, 1 vol. in-8, XII, 428 pp. Outside Italy: Fr. 20.

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