THEOLOGIA MORALIS

Principles — Responses — Counsels

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VOLUME II

On the Exercise of the Virtues (1924)

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Preface

The present volume of this work is assigned to an argument which the moral theologian will deservedly claim as especially his own. For in it the principles of fundamental moral theology continually come to be used; in it there must be set forth the moral order which, Christ the Redeemer reigning, is appointed to be observed by human liberty; in it the immutable divine law, and the law most intimate to us, must chiefly be questioned and consulted, so that human decrees have only the secondary parts of complement to fulfill. Yet we confess that these are not of slight moment in the treatise *On Justice*, which, together with the treatises *On the Theological Virtues* and *On Religion*, must truly be called principal. In what way positive laws seem to us to have to be sketched for the use of a truly international school, we shall explain at the very threshold of the treatise on justice. A business, certainly difficult enough, had to be undertaken by us: that of comparing the dictates of conscience with the demands of many civil laws. Yet the labor was in part lightened for us by several modern works which, as general or special studies of Aertnijs, Arregui, Cholly, Duijnstee, Ferreres, Gariepy, Lehmkuhl, Piscetta-Gennaro, Prummer, Slater, Van Gestel, either allege legal definitions, or, what is of greater value, in some measure explain them. The bibliography of volume IV will teach what books we have employed. But much more profitable to us was the kindly work of learned friends who, from various parts of Europe and of both Americas, either supplied texts of law, or learnedly answered our inquiries concerning law. We intended here especially to render them the thanks due.

Now we should wish that our book be judged and read with the same mind with which it was written, that is, with sincere zeal for pursuing the truth. Therefore we proposed neither to deny due honor to authority, nor to abstain from an intrinsic examination of causes, nor to withdraw the mind from attending to circumstances which, in their responses and counsels, the greatest doctors did not omit to consider. By this way alone, unless we are mistaken, can that always desirable progress of science be hoped for. But that scientific progress itself may bring that increase with which alone cultivators of sacred science can be content, an increase, I say, profitable to the gospel of peace, God alone will give. We ask from divine munificence such spiritual usefulness for our humble effort, through the holy youth who once was a hearer of theology in this Institute, on whose feast day we make an end of writing.

Rome, on the feast of St. Aloysius, June 21, 1924.

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Introduction

Why the Volume Is Entitled "On the Exercise of the Virtues"

As we wrote at the beginning (I, 25), we are sanctified by a twofold way, that is, by the use of the sacraments and by our cooperation with the grace of God. Volume II is assigned to explaining this cooperation.

Moreover, there has already been occasion more than once to admonish this. Although the state of grace is the condition and principle, and the habit of charity is the root of our merits, nevertheless we shall properly be judged according to our acts, not according to our habits: through acts, not through habits, we merit and demerit; in acts consists our cooperation with the grace of God. Nevertheless, the habitual dignity of the agent contributes to the quantity of merit; and the habits themselves, as fountains of acts, are something principal in the spiritual life. Therefore moral theologians are accustomed to entitle their treatises *On the Virtues*, unless they prefer to distribute their arguments according to the various precepts of the Decalogue. That its own honor might remain to the virtues, and yet that we might vindicate for moral theology its own proper object in this volume, we have called it *On the Exercise of the Virtues*: the exercise of virtues at once denotes acts, and expresses the relation of acts to the various virtues.

Moreover, we gave the necessary notions concerning the virtues in volume I, nn. 493-497.

Division of the volume. The volume will conveniently be divided into two books. The one will treat of the theological virtues, the other will be assigned to the moral virtues.

First Book: On the Theological Virtues

Treatise I: On the Virtue of Faith

Usefulness. The treatise on Faith, which is the solemn beginning of dogmatic theology, also vindicates for itself no slight moment in moral theology.

For the virtue without which it is impossible to please God [1] founds the whole Christian life; and while we are instructed concerning its excellence and merit, we have matter from which to arouse or foster spiritual fervor; while it discerns the varied necessity by which revealed things are to be explicitly believed or professed, it supplies us with norms useful in administering the sacraments, especially baptism. Nor are difficult cases lacking to be examined and solved concerning the positive duties of faith. Today also, in so great a disturbance of errors, it is of very great importance that we know how rightly to weigh the guilt of heresy and infidelity, and accurately discern what, in their intercourse with those who err, can be permitted to Catholics and what must be prohibited.

Order of speaking. - After the notion and excellence of Faith have been set forth, we shall treat, in distinct titles, of the duty of believing; of the duty of professing Faith; of infidelity and of sins opposed to Faith; finally of the legal safeguards of Faith.

[1] Heb. 11, 6.

Title I: Notion of Faith and Act of Faith. Merit of Its Obedience

— Faith is a theological virtue by which man is able to believe, as he ought, on account of the authority of God revealing, those things which God has revealed.

The act of faith denotes assent to the first truth; by which assent the believer participates in divine truth. This assent is formally in the intellect. Considering its formal object, which is the authority of testimony, and because the evidence of the primary object, which is God, is lacking, this assent is free; and hence it is commanded by the will under the aspect of good. But we believe as we ought, insofar as no created reason, but the divine knowledge and veracity itself in speaking, constitutes the sole motive of assent; and insofar as the firmness of this assent surpasses the firmness of natural evidence. This greater firmness is to be derived from the benefit of grace alone.

Insofar as we are illuminated by the very light of the divine intellect, faith is our immense dignity; insofar as we take the intellect captive unto the obedience of faith, that is, renounce our own criterion in order to apply the divine criterion, faith is glorious to God; insofar as we furnish this from the command of a free will, faith is greatly meritorious in the just man. Cf. concerning these points the dogmatic treatise on faith.

— The act of faith is distinguished: a) formal and quasi-virtual. It is formal when the motive of faith (the authority of God revealing) explicitly occurs to the mind. But the habitual persuasion which frequent exercise of faith leaves after itself can pass into act without express memory of the motive of faith. Then an assent is made which truly rests upon that motive, and hence is an act of faith; but because the motive of faith has not been explicitly proposed, this implicit assent is improperly called a virtual act of faith. Properly, on the part of the formal object, the act of faith cannot be virtually contained in any other act: in no act of a theological virtue, for hope and charity presuppose faith; in no other act of a moral virtue, for this is of an inferior order. But on the part of the material object, properly virtual faith is had. Thus, by believing whatever things God has revealed, a man virtually believes the individual truths which have come to us by God's speaking.

b) Internal, or contained in the judgment of the mind alone, and external. The latter, made before witnesses, is at the same time a profession of faith, either formal or virtual, according as one directly testifies to his faith, or performs acts which demonstrate faith: as when someone confesses his sins, approaches the sacred table, or devoutly assists at Mass.

Excellence and usefulness of faith. Faith is the beginning and root of all justification. The act of faith is our first free response full of our vocation to the supernatural end. This vocation looks to this, that we will to be wayfarers, making our way toward possessing God in Himself. If we direct our steps to this most sublime goal, we are freed from servitude to present things, and, elevated above earthly things, we begin in some way to understand the mysterious order of this world, mixed with miseries and evils, and we hold the principle of victory over evil desires, and of consolation in any adverse things whatever. At the same time we are impelled to act worthily of so great an end, so that a manner of acting not only honorable but strong, noble, magnanimous, becomes connatural to us. Wherefore not undeservedly does the Apostle (Heb. XI) not hesitate to turn all things gloriously done to the praise of faith. And thus it happens that human life, turned from perishing into

immortal, from low into divine, becomes most useful not less to universal human society than to one's own eternal salvation.

Aids for faith to be acquired, preserved, and increased by us. For heavenly gifts, such as Faith is, we can dispose ourselves negatively, by removing obstacles, and, by the facility of acquired habits, can as it were complete and strengthen the infused virtues themselves. But positively we cannot dispose ourselves for Faith without the prevenient and assisting grace of God. Since, however, as is explained at length in the school of dogma, the assent of Faith, most firm above every other assent, pertains elicitively to the intellect and requires the command of the will, for acquiring, preserving, and increasing Faith, the dispositions of the will must be cared for by us no less than those of the intellect.

Therefore let us strive to have a sound mind, alien from cavils, not excessively hesitating, capable of firm judgment or opinion; a will truly loving and zealous for the good, humble, devoted to God. Let that will apply the intellect to the luminous rather than to the obscure aspects of religion, to the direct motives for adhering, more than to solving difficulties. Let us practically cultivate the spirit of faith in our whole conduct, so that according to the norms of faith we may judge, feel, speak, and act. Let us act as if we already possessed great faith. In this way, since the true and the good are one, already by the very experience of good works we shall in a manner prove the truth of our faith.

Summary

— I. Faith is defined: a theological virtue by which a man is habitually capable of believing, as he ought, on account of the authority of God revealing, those things which God has revealed.

The assent of Faith, although it is formally in the intellect, is nevertheless free, so that it is commanded by the will, under the aspect of good; it rests upon the divine knowledge and veracity alone in speaking; and, by the benefit of grace, it has a firmness proportioned to the motive, which surpasses the firmness of our natural evidence.

Faith is necessary for man in the present state, honorable to the believer, glorious to God, very meritorious for the just man.

II. The act of faith is distinguished: 1. Formal and virtual. On the part of the material object, we formally believe truths of faith which explicitly occur to the mind; but virtually, truths which are contained in a more general assent: as when we believe whatever the Church proposes to us as to be believed. On the part of the formal object, the act of faith is properly contained, or can be contained, in no other act. Yet because habitual persuasion can pass into act without explicit memory of the motive, there is distinguished formal faith, which exists when we explicitly remember the motive of faith, and quasi-virtual faith, which is that of one adhering to revealed truth without an explicit proposal of the motive of faith;

2. Internal and external: internal is contained in the judgment of the mind alone; external is contained also in external signification. The external, when it is made before witnesses, is at the same time a profession of faith, whether formal, when one expressly affirms his faith, or virtual, when he does those things which per se suppose and demonstrate faith.

III. The excellence and usefulness of Faith is made manifest from this, that from it has its beginning the divine direction of our life, by which, freed from earthly servitudes and made superior to every misfortune, we are rendered ready for doing honorable and magnanimous things.

For faith to be more easily acquired, preserved, and increased by us from the grace of God, obstacles are removed by a mind sound, right, firm; by a will zealous for the good, humble and devoted to God; by attention to the positive motives of credibility; by the custom of acting according to the principles of faith.

Title II: On the Duty of Believing

What things are to be believed; when they are actually to be believed: these two matters come to be explained in order.

Chapter I: What Things Are to Be Believed

— Explicitly or implicitly, whatever things God has revealed are to be believed. He who refuses to give faith even to one point derogates from the supreme truth, and consequently can no longer believe anything on account of God's authority alone. He has preferred the false evidence, or conclusion, of his own mind to this authority.

— Explicitly, some things are to be believed by necessity of means, others by necessity of precept. Each necessity of acts affects adults alone; for they alone are to be saved by their own acts.

Moreover, that is necessary by necessity of means without which man would not have, toward his end, that proportion which by God's ordination he ought to have.

For necessity in order to salvation can be taken either from the nature of the thing or from the obligation of divine law. From the nature of the thing, when there is question of a disposition required so that we may have toward the end the proportion appointed by divine ordination, or of removing an obstacle by which the end would per se be impeded (for example, of removing the state of sin). Necessity of means directly regards this positive disposition or removal of an obstacle; necessity of precept immediately and formally follows moral obligation. Although for adults the necessity of precept is superadded to the necessity of means.

From the notion is gathered the practical criterion by which they are accustomed to distinguish necessity of means from necessity of precept: involuntary omission does not excuse from necessity of means; it excuses from necessity of precept.

Necessity of means is present more strictly when the matter of the necessary thing can be supplied by no act, no disposition. A necessity of this kind is said to be of means, in reality: thus baptism for infants dying without the use of reason. But if God admits that the necessary thing can be supplied by a formal or virtual intention which is contained in some act, the thing is said to be necessary by necessity of means in desire. Thus baptism can be supplied by an act of perfect charity, for adults who do not have the occasion of baptism, or who are ignorant of its necessity.

— Now indeed, by necessity of means, God must explicitly be believed as existing and as remunerator; that is, as the Apostle says, Heb. 11, 6, "he who comes to God must believe that he is, and that he is a rewarder of those who seek him." And the reason itself is at hand.

It is altogether necessary that man, insofar as he is to be saved by his own acts, formally conjoin his will with the divine will through charity. But unless I know that God is my good, I shall not be able to affect union with God, which belongs to charity or love. But in the present order, where theological charity is required, knowledge by faith alone avails to introduce charity. Therefore explicit faith in God existing and in God the supernatural remunerator must have preceded the indispensable act of charity.

But the disputed question whether the very existence of some first cause distinct from the world, which is a preamble of faith, can itself at the same time be the object of faith [1], can be passed over by us. It suffices that we teach with the Apostle (Heb. 11, 6) that supernatural and explicit faith in the existence of God is necessary by necessity of means insofar as He Himself reveals it, and besides in

His remunerating providence which He exercises toward us. Now indeed, He does not reveal Himself merely as existing, but as existing either one, omnipotent, provident, as He was revealed to the Jews; or one and triune, the Father, as He is revealed to Christians (St. Thomas, lect. 2 on chapter XI of the Epistle to the Hebrews).

Wherefore, when God is proposed as to be believed as existing, He is at the same time proposed as to be believed either as one in three Persons, or as endowed with attributes whose faith is impeded by no natural evidence.

[1] In the school of St. Thomas, this is commonly denied. Cf. St. Thomas, on chapter XI of the Epistle to the Hebrews, lect. 2 toward the end; C. Billot, *De virtutibus infusis*, De fide, thesis XI; Van Noort, *De virtutibus infusis*, p. 240 ff. (ed. 1906).

— Are these other two points to be believed by necessity of means: the Trinity and the Incarnation of the Son of God? Some think that this explicit faith is required after the promulgation of the Gospel; more deny this, both because such a necessity is demonstrated from no revealed source, and because that faith is not per se required for an act of perfect charity, and because it seems more consonant with the salvific will of God that He require only that which is, as it were from the nature of the thing, necessary for salvation. Yet because in the Gospel of St. Matthew, last chapter; St. John 3, 16, 18; Acts 4, 12; Rom. 3, 22, faith in Jesus Christ is shown to be a means of justice; because explicit faith in the Most Holy Trinity is to be premised to baptism, the opinion of Suarez (*De fide*, d. 12, s. 4, nn. 18, 19) and Lugo (*De fide*, d. 12, nn. 106, 107) seems to be preferred, according to whom this faith is necessary, like baptism itself, in reality, or in desire. And so a positive disposition to first sanctification is not present in the adult except because in his act of charity there is contained the desire of believing these things explicitly. Wherefore, even after justification, he preserves the obligation of believing those two points explicitly as soon as he can, just as he preserves the obligation of receiving the sacrament of baptism.

Thence also it is clear why the necessity of means concerning these two points cannot be gathered from this 64th proposition condemned by Innocent XI: "A man is capable of absolution, however much he labors under ignorance of the mysteries of faith, and even if through negligence, even culpable negligence, he does not know the mystery of the Most Holy Trinity and of the Incarnation of Our Lord Jesus Christ" (*Denz.*, n. 1214).

— Necessity of precept, as such, denotes a mere condition required for attaining the end [1], that is, the material observance of the thing commanded is not necessary as a means, but this alone is required, that our will be formally conformed with the divine will and so remain in charity.

But that formal conformity is indicated from conscience (cf. I, 338, 339), and hence cannot be destroyed by inculpable ignorance of precepts.

Now indeed, among the duties of the Christian state this is repeated: that the Christian religion be known as to substance, and that the common duties of Christians not be unknown. And because these are contained in the following documents, these documents are to be known under grave obligation, not indeed, at least per se, so that they can be recited, but at least in a coarse way and as to substance:

a) The Apostles' Creed, except, however, the perpetual virginity of Mary, the burial of Christ, and His descent into hell, which, as being secondary, are to be known under slight obligation; except also the

name of Pontius Pilate and the circumstance of the third day as to the resurrection, which may be unknown without punishment.

The sitting at the right hand of the Father and the communion of Saints are to be known insofar as they denote the glorious reign of Christ in the heavens, and the beatitude which the Saints participate with Him.

b) The precepts of the Decalogue and those precepts of the Church which affect all;

c) The sacraments most necessary: baptism, eucharist, penance; others, when one wishes to receive them;

d) The Lord's Prayer: insofar as this at least must be known, that all goods are to be asked from God as from a Father;

e) The acts of faith, hope, charity, contrition, so that the faithful can elicit these.

[1] "If you wish to enter into life, keep the commandments." But beware lest you infer from this that the good works of the just, among which the free fulfillment of the commandments is eminent, are not at the same time meritorious causes of eternal life.

Corollaries. — 1. Considering the probable obligation of means of knowing the four points:

a) A healthy man, ignorant of these, can be baptized or absolved before he has distinctly believed these things at the suggestion of the minister or confessor: for example, by making the sign of the cross with the unlearned man, let the minister explain the individual words. Yet it is not necessary that he already be able to recite these from memory, but he is to be admonished concerning the obligation of knowing and better learning them, according to his capacity.

b) Even in dying barbarians, as far as can be done, actual faith in these mysteries is to be obtained; but if this cannot be obtained, they will only be baptized and absolved conditionally.

— 2. Considering the moral incapacity of the unlearned to know otherwise the things which are commanded to be known, it must be inculcated with all force that they learn the same things by memory and accurately. Nor can they neglect that without at least venial fault. Yet there are not lacking, at least in certain regions, unlearned persons who are excused by their very incapacity to grasp and retain these things. But they are less excused, or rather are inexcusable, who, learned in other matters, do not care about knowing religion.

— 3. Considering the good of souls for which he must provide, a pastor sins gravely who neglects to teach children and the faithful the things which they ought to know under grave obligation.

4. Considering his office as minister of the sacrament, the confessor ought to teach those things which here and now are necessary so that the sacrament of penance can be received with fruit; but considering the duty of charity, for fulfilling which he has an easy occasion, the confessor ought to indicate some means by which the penitent can dissipate his excessive ignorance: as, for example, that he procure and read for himself a little book in which these things are clearly set forth; that he hear them from a person who is related, friendly, and competent; that he assist at a sacred function under which catechesis is handed down to the people.
5. Today they exercise a most opportune work of spiritual mercy who, whether alone or gathered together, strive industriously to propagate the knowledge of religion.

Summary

— I. Object and necessity of the act of faith. All things which God has revealed are to be believed at least implicitly, lest, derogating from the first truth in some point, we place the false opinion of our own mind before divine authority, and no longer believe anything on account of God's authority alone. Some revealed things are to be believed explicitly also by necessity of means; others, by necessity of precept alone; others, by no necessity. That has necessity of means whose influence is required so that man may attain that proportion toward his end which by God's ordination he ought to have: wherefore it is said to be necessary from the nature of the thing; whatever is required by law has necessity of precept. Involuntary omission excuses from no necessity of means, but indeed excuses from necessity of precept. Moreover, necessity of means can be stricter, in reality, when it is supplied by no act or disposition; and broader, or in desire, when it can be supplied by a formal or virtual intention contained in some other act: thus an act of perfect charity can supply baptism for those who are ignorant of its necessity or lack its occasion.

II. What things, by what necessity, are to be believed. 1. By necessity of means, God must explicitly be believed as existing and as remunerator (Heb. 11, 6); it is disputed whether the Trinity and the Incarnation of the Son of God also must be believed by necessity of means. The opinion of Suarez and Lugo is to be preferred, who affirm necessity of means, in reality or in desire, concerning this faith.

2. By necessity of precept, the Christian religion is to be known as to substance. Wherefore, the principal points of the Apostles' Creed are to be believed explicitly; and the precepts of the Decalogue and the common precepts of the Church are to be known; the sacraments most necessary; the Lord's Prayer; acts of faith, hope, charity, contrition. Per se it is not required that the formulas can be recited.

Chapter II: When They Are to Be Believed

— The internal act of faith can sometimes become necessary from faith itself, or per se; sometimes from another virtue, or by accident. And the 1st proposition was condemned by Alexander VII and proposition 16 by Innocent XI, which denied that there exists an obligation per se (*Denz.*, nn. 1101, 1166).

— I. From the very virtue of faith, or per se:

1. Children instructed in a Christian manner, when they have attained the perfect use of reason, as if spontaneously believe the mysteries of faith proposed to them, and they ought actually to believe the mysteries whose explicit faith is known by them to be necessary for salvation.
2. Adult unbelievers or non-Catholics, when the Catholic truth has been sufficiently proposed to them, ought actually to believe it. As long as it is held as merely probable, they have this obligation alone: of praying and proceeding in their investigation. For the act of faith supposes and requires a certain knowledge of truth. In what way grace or supernatural illumination is useful or necessary for procuring this very certitude is explained in the school of dogma. - But concerning the reason by which proposition 4 was condemned by Innocent XI, "An unbeliever not believing, led by a less probable opinion, will be excused from infidelity," this was said in fundamental theology, n. 155 b. Wherefore we confess that we do not see how some impose the obligation of embracing, at the hour of death, the more probable religion, if this requires an act of faith firm above all things. - The grace of God will loose that knot otherwise.
3. Those who have fallen into heresy or apostasy, in order that they may repair the injury done to God, ought to elicit an act of faith.
4. When a temptation against faith is urgent, the difficulty objected is generally not to be examined, but rather the mind is to turn itself to other objects. Then, when the storm has been calmed, concerning the occasion of doubt, if it was specious, a learned confessor or another man can be asked, indeed sometimes ought to be asked, with consideration had of the danger of a new temptation. But to elicit with a peaceful mind a simple, general act of faith, without examination, will for the most part help in the temptation itself. They say that the same is necessary if the temptation could not otherwise be conquered: but in what way will this be established?
5. Faith is sometimes to be cultivated in life by its very acts. They are accustomed to ask how often. And some answered for a monthly obligation, others for an annual obligation, others for a lesser obligation, so that Innocent XI condemned proposition 17: "It is enough to elicit an act of faith once in life" (*Denz.*, n. 1167). - To define theoretically the commanded frequency is impassable to us: the use of faith ought to be frequent enough that man not be placed in proximate danger of losing it. But a definition of the necessary frequency is practically useless. For since the acts suffice which we called quasi-virtual, and necessary occasions of such acts abound in Christian life, from the very precepts of the Church which impose hearing Mass, confession of sins, and reception of the Eucharist, all who obey the Church satisfy most amply

the precept of eliciting an act of faith; but the less pious, who neglect all these things, will not advert to this obligation.

Therefore it remains that with fervent exhortation we exhort Christians to direct their life according to the precepts and counsels of faith, and that we more often, even in confession, stir the same to the daily recitation of the acts of faith, hope, and charity: which use is most salutary.

— II. From a positive precept or from another virtue, or by accident, faith ought actually to be exercised:

1. As often as an exterior profession of faith is to be made.
2. When another virtue which presupposes faith is to be exercised: for example, when an act of hope, charity, or penance is to be elicited. While that act is made, at the same time the article which pertains to that virtue is implicitly believed. This implicit act is sufficient.
3. If an urgent temptation against another virtue cannot otherwise be overcome. How this is ever established does not appear.

Summary

— When the act of faith must be elicited. 1. From the very virtue of faith, or per se, the internal act of faith must be elicited: a) by children after they have attained the perfect use of reason; - b) by adult unbelievers or non-Catholics, when the Catholic truth has been sufficiently proposed to them; - c) by those who have slipped into heresy or apostasy, as a necessary part of necessary conversion; - d) for overcoming a temptation against faith, if, however, the act is a necessary means; - e) sometimes in life. How often? We cannot define this theoretically; practically it is not useful, since pious men abundantly satisfy the precept, but the less pious do not care about that obligation. Yet a greater frequency of acts will be very opportunely recommended to these.

2. By accident, the act of faith obliges: a) when an exterior profession of faith is to be made; - b) when another virtue which presupposes faith is to be exercised; - c) if an urgent temptation against another virtue cannot otherwise be overcome.

Title III: On the Duty of Professing the Faith

— 1. By leading a Christian life, the faithful person in reality sufficiently signifies his faith and makes that profession of it which is called material.

2. From c. 1325 § 1: "The faithful of Christ are bound openly to profess the faith, whenever their silence, evasiveness, or manner of acting would carry with it an implicit denial of faith, contempt of religion, injury to God, or scandal of neighbor."

Therefore: formal profession, by the law of nature, is to be made when, unless it were made, great honor due to God or great utility to be procured for the neighbor would be withdrawn, privatively or contrarily. - Privatively, I say, if for that reason great honor of God, or great utility of the neighbor, would cease; which case will be rare. Contrarily, if, because of the omitted profession of faith, God would be affected by injury, the neighbor would suffer grave detriment: for example, religion would be contemned, the neighbor would thereby be turned away from conversion. Charity then commands the profession; indeed faith itself does so, if the detriment would be to faith itself.

Therefore, as often as silence or evasiveness would be equivalent to denial, or would denote fear or inconstancy or shame, faith is to be professed by us, lest we fall into that saying: "He who shall be ashamed of me and of my words, of him the Son of man shall be ashamed when he shall come in his majesty" (Luke 9, 26. From the parallel place itself, Matt. 10, 33, it appears that there is question of shame which is morally equivalent to denial). Wherefore, to signify that necessity of fortitude, the Christian to be confirmed is anointed with sacred chrism on the raised forehead. Cf. Lugo, *De fide*, d. 14, n. 377. To manifest mere fear is not of itself grave, contrary to giving an indication of denial or inconstancy.

Wherefore they regularly judge that an answer is to be given with open profession of faith to a public authority questioning concerning religion, at least if the legal order is observed by the one questioning. Cf. proposition 18a condemned by Innocent XI: "If anyone is questioned by public authority, I counsel that he ingenuously confess the faith as glorious to God and to faith; to be silent I do not condemn as sinful per se" (*Denz.*, n. 1168). For if the law itself has forbidden inquiries into matters of conscience, it will be enough to decline an answer for this reason. And a private man who asks about religion can also be repelled.

This doctrine is confirmed by the cited c. 1325 § 1.

— By ecclesiastical law (cc. 1106-1408), a contrary custom being reprobated, the following must personally and according to the formula approved by the Apostolic See (such as is exhibited at the beginning of the Code) profess the faith:

1. Before the presiding officer, or his delegate: all who are present at a council or synod, even with merely consultative vote; but the presiding officer before the same council or synod;
2. Before the Dean of the Sacred College, the first Cardinals in the order of priests and of deacons, and the Camerlengo of the Holy Roman Church: those promoted to the cardinalitial dignity;

3. Before one delegated by the Apostolic See: those promoted to an episcopal See, even non-residential, or to the government of an abbacy or prelature nullius, of an Apostolic vicariate, or of an Apostolic prefecture;
4. Before the cathedral chapter: the capitular Vicar;
5. Before the Ordinary of the place, or his delegate, and before the chapter: those who have been promoted to a dignity or canonry;
6. Before the Ordinary of the place, or his delegate, and before the other consultors: those assumed to the office of diocesan consultors;
7. Before the Ordinary of the place, or his delegate: the Vicar general, pastors, and those for whom provision has been made concerning any benefices, even manual benefices, having the care of souls; the rector, professors of sacred theology, canon law, and philosophy in a seminary, at the beginning of each scholastic year, or at least at the beginning of the office undertaken; all who are to be promoted to the order of subdiaconate; censors of books ex officio in diocesan curias (c. 1393); priests destined for receiving confessions and sacred preachers, before they are endowed with the faculty of exercising those offices;
8. Before the Ordinary or his delegate: the rector of a University or Faculty; but before the rector of the University or Faculty, or his delegate: all professors in a University or Faculty canonically erected, at the beginning of each scholastic year, or at least at the beginning of the office undertaken; likewise those who, after examination, are endowed with academic degrees;
9. Before the chapter or the Superior who nominated them, or their delegate: Superiors in clerical religious institutes.

N. B. "Those who, after relinquishing the former office, obtain another office or benefice or dignity, even of the same species, must again emit the profession of faith" (c. 1406 § 2).

Although c. 1406 now imposes the direct obligation of professing the faith, nevertheless from the old law it can still be said that the Superiors before whom the profession is to be emitted are primarily held by the obligation of seeing to it that the promise of faith be made (Genicot, 197; Arregui, n. 121). Indeed if they themselves refuse to receive the profession of faith, the subjects will be excused by impossibility.

— From the response of the Holy Office, 22 March 1918, the abjurations of modernism prescribed by the decrees of Pius X continue in force until the Holy See shall determine otherwise. Wherefore, the profession of faith having been premised, the following must abjure modernism and hand over the signed formula of the oath:

To the ordaining Bishop: those to be ordained in sacred orders, at least before the subdiaconate; - to the approving Ordinary: future confessors and sacred preachers, before they are endowed with the faculty of exercising those offices (but not when the faculty is prolonged for them); - to the nominating Ordinary: pastors, canons, beneficiaries before entering upon possession of the benefice, and consequently as often as they accede to a new benefice; Lenten preachers; - to the Ordinary of the place or to the Cardinal Prefect or Secretary: officials of the episcopal curia, not excepting the Vicar general; of ecclesiastical tribunals, not excepting the judges; of the Roman Congregations; - to the

nominating Superior or chapter: moderators of religious Families and Congregations, before they enter upon the office, and consequently as often as they undertake a new office; - to their own superior: doctors, or lectors, in seminaries and religious institutes, each year, before beginning the lectures. - This obligation primarily affects Superiors: they ought to call those bound to fulfill the obligation. Those who are unwilling to swear are to be reported to the Holy Office at once.

(These things are gathered both from the Motu Proprio, 1 September 1910, and from various declarations of the Sacred Consistorial Congregation, 25 September, 25 October, 17 December 1910. - All are proposed in our *Periodica*, t. 5 and 6).

You ask whether the profession of faith through the formula of Pius IV, with the definitions of the Vatican Council added, must necessarily be premised to the abjuration of modernism.

There is no doubt that this is laudably done. Yet since in the Motu Proprio itself of 1 September 1910 the profession of faith is distinguished from the formula of the oath, and the Code c. 1406 defines by whom and when the profession of faith is to be made, this profession does not seem strictly to be appended to the abjuration, except when the profession of faith itself is prescribed by the Code. Besides, only the oath is mentioned in the declarations of 25 September 1910, by which annual abjuration is prescribed for Doctors who, from the earlier Motu Proprio *Sacrorum Antistitum*, had to swear only at the beginning of their office (Cf. *Per.*, V, 200 and 229).

— In no case, whether by voice or by nod, is it lawful exteriorly to deny the faith.

But when profession is not prescribed, it is per se lawful, and sometimes expedient, to conceal the faith, and consequently to do so honestly and without a lie: as if, hidden among heretics or unbelievers, you could accomplish more good, or if more evil is to be feared from confession: disturbances, killings, the exasperation of a tyrant, danger of defection under tortures. Hence voluntarily to offer oneself to the persecutor is for the most part rash. - Nor must one per se obey a general edict by which the faithful are commanded to betray themselves, except, as has just been said, if he who does not appear is commonly regarded as an apostate. Nor is anyone forbidden to obtain by money that no inquiry be made concerning his faith. Much less does he deny the faith, but rather confesses it, who flees persecution. But the pastor must examine what is more advisable for the good of souls: either by the example of fearless confession, or at least by his presence, to confirm the others; or, on the contrary, to withdraw himself for a time so that from a safe place he may administer the territory and reserve himself for the good of more persons.

— It is no more permitted by clothing than by words or by another sign to profess superstition, or adherence to a condemned sect. Wherefore it is not lawful to use clothing which, neither of itself nor from the circumstances, has another immediate signification. But if the immediate signification is diverse, or this is ambiguous or twofold, there will be place for the prudent use of the principle concerning double effect.

Hence they distinguish sacred clothing from profane; among profane clothing, some garments which, as Lehmkuhl says, I, 405, by showing the inhabitants of an unbelieving region, materially distinguish unbelievers from the faithful; others which bear signs for recognizing unbelievers, and by which therefore unbelievers are formally distinguished from the faithful: as the distinctive garments of the Jews were in the City and in Poland. A graver cause indeed is required for using these latter than for the former profane garments. Yet the wearing of such clothing carries another explanation than

apostasy. Wherefore only the garments which are used in superstitious functions fall under a sufficiently absolute prohibition, unless a different explanation is positively present.

Lehmkuhl, l. c., and also Genicot, I, 197, assimilate Masonic insignia to garments of sacred use. But we would wish this also to be understood prudently, when they certainly show adherence to a condemned sect. For garments, since in themselves they are indifferent things, easily have an uncertain signification. What, for example, if, to deceive Freemasons, many others momentarily adopt those signs so that true sectarians are not distinguished from false ones; what if, in a city where he is unknown, some traveler, without any scandal, wears the insignia so that he may observe the sectarians; what if, in a dangerous hour, when life is to be feared for, an unknown Catholic, not specially asked to manifest adherence by this sign, protects himself with those insignia in order to flee persecution? Does not the signification become ambiguous from the circumstances themselves, and consequently will it not be able to be tolerated for a proportionate cause?

This is the rule. The less the signification is definite of itself, the more easily, from the circumstances themselves, it is rendered uncertain. Genicot himself, I, 197, whom others follow, allows that whether to deceive them, or to obtain their benevolence, you may use gestures by which sectarians recognize one another, "because it does not seem equivalent to a profession of the sect."

— Since the eating of meats of itself says no profession of religion, and for various causes meats are eaten even by Catholics on a day of abstinence, it is altogether lawful, for declining grave danger - not however for fleeing mockery [1] - to dissemble the faith by eating meats. Indeed, to avoid rashness, this per se is to be done. Except if that eating is demanded in hatred of the faith. Then, without protestation, they cannot be eaten. Suppose it to be established by the guests that he who is an enemy of Catholicism should eat meats: it would not be lawful to eat them unless by protesting the faith.

Nor otherwise, if in conversation someone presents you as an adversary of the faith, could you be silent, unless your whole bearing betrayed a different cause of silence.

[1] According to the cause or form of mockery, that shame could be opposed to faith or to religion.

Illicit Concealment. — Because faith must sometimes be professed, every concealment of faith which betrays the shame concerning which the Lord says in the Gospel is to be condemned: "He who shall be ashamed of me and of my words: of him the Son of man shall be ashamed, when he shall come in his majesty and that of the Father and of the holy angels" (Luke 9, 26). Nor is it lawful to receive into the Church someone who would wish to be merely a hidden Christian through his whole life. But the circumstances can be such that even a merely individual exterior profession would give occasion to excessive evil; indeed, that the public good would command silence. As long as such circumstances remain, it will be lawful to be a hidden Christian and to satisfy the debt of Christian profession through a posthumous revelation, committed to a trustworthy man, as soon as this can be done without common or prevailing harm.

Summary

— I. Besides the material profession of faith which a Christian life led entails, formal profession is to be made: 1. by the law of nature, when it is required lest God be deprived of great honor or the neighbor of great utility; much more lest God be affected by injury, or the neighbor by grave harm.

The obligation is of charity, indeed of faith, if the detriment to be avoided would be of faith. Therefore as often as silence or evasiveness would be an indication of denial or inconstancy, faith is to be professed: this regularly happens when public authority, the legal order being observed, asks about religion (cf. c. 1325, § 1); - 2. by ecclesiastical law, a contrary custom being reprobated, those indicated in c. 1406 must personally profess the faith. Moreover, from the response of the Holy Office, 22 March 1918, the abjurations of modernism prescribed by Pius X continue in force until the Holy See shall determine otherwise. The profession of faith must be placed before these abjurations, whenever c. 1406 commands it to be made.

II. It is never lawful exteriorly to deny the faith; to conceal it is per se lawful and sometimes expedient. Wherefore it would be wrong to use garments which neither of themselves nor from the circumstances had another immediate signification than that of superstition. If the signification were ambiguous, the principles concerning double effect will have to be applied prudently. Nearly the same is to be said concerning Masonic insignia. Unless the eating of meats is demanded in hatred of the faith, to dissemble the faith by eating meats is not forbidden. - But, on the other hand, it is not lawful for one converted to the faith to conceal his conversion perpetually, at least from a private cause: he would sin against the obligation of professing the faith.

Title IV: On Infidelity and Sins Against Faith

Chapter I: On Infidelity

— Infidelity designates the state of him who does not believe, with an assent of faith at least implicit, the things which have been revealed by God so that they may be believed by him.

With an assent of faith, I say, because an inferior adherence, if there is any, by no means suffices, nor can it in any way supply for the assent of faith.

With an assent at least implicit: because very many, not to say all, of the faithful lack an adequate knowledge of revealed religion; and very many implicitly believe what they explicitly deny: as happened, before the defined dogmas of the Immaculate Conception and Pontifical Infallibility, to those who in good faith denied each truth. And because of their implicit faith, those who mix revealed and non-revealed things in a manner even culpable are very improperly called unbelievers (Cf. Billot, *De Fide*, before thesis XXIV).

The things which have been revealed so that they may be believed by him: because a revelation not universal, such as that of the Old Law, did not have to be positively believed by one who was not a Jew (Cf. Billot, p. 348, before thesis XXIV). Say the same concerning private revelations of others.

— Infidelity is distinguished as negative and privative. Negative is that of him to whom the truth of faith has not been sufficiently proposed - and this without his fault; privative, or culpable, can be merely privative or indirectly contrary to faith, and directly contrary. Merely privative infidelity, although culpable, does not exclude the will of believing what is sufficiently proposed by God. Wherefore it can be composed with the formal object of faith; it is not directly opposed to faith so that it takes away the habit of faith. Directly contrary infidelity is repugnant to the formal object of faith. For it is an unwillingness to believe the things which are sufficiently proposed as revealed: whether, after one has recognized the credibility, he nevertheless was unwilling to command the act of faith; or whether he impeded the very proposition of the truth, unwilling in any case to believe; or whether he pertinaciously rejected the proposition of truth through the Church.

Now he refuses to believe who deliberately doubts, and consequently has as doubtful or uncertain what is divinely revealed and to be believed.

As opposed to the formal motive itself of the virtue, or of faith considered according to its primary and principal act, this infidelity is a grave sin in its whole genus, and necessarily draws with itself the loss of the infused habit of faith.

Affected ignorance of the motives of credibility, if it is dictated by fear lest you have to believe, is not contrary infidelity.

Various Opinions. — Infidelity, etymologically, designates the state of him who is not faithful. Because, in the present order, faith is due to every man, every infidelity can be called privative. Thus Coninck, apud Lugo, d. 18, n. 4.

Nevertheless most, even in the present state, distinguish a certain negative infidelity from privative. They understand this distinction in different ways. For some, thus the Salmanticenses, tr. 21, c. 3, n. 1, admit only a two-membered division, while most separate privative from contrary infidelity. But

others, as Struggl, tr. 4, q. 2, n. 1, understand privative infidelity to be the voluntary omission of the assent of faith in him to whom faith, or an article of faith, has been sufficiently proposed (Struggl thinks this is not exclusive of the habit of faith previously infused, while Ballerini, *Opus theol.*, tr. 5, n. 73, on the contrary, opines otherwise); but positive or contrary infidelity they say is a positive assent contrary or contradictory to true faith.

Suarez, d. 16, sect. I, n. 7, recognizes privative infidelity in men to whom the true faith has not yet been proposed: this sin is committed through negligence alone and is opposed to the precept of hearing the faith; it is negligence in seeking and investigating a sufficient proposition of faith. Whereas by being unwilling to believe the things heard, contrary infidelity is committed.

Lugo, d. 18, n. 3, defines the proper sin of infidelity as "that which from its object is so opposed to actual faith that, as long as it is not retracted, the man cannot have the will of believing by a true and proper act of faith." Therefore it is only an unwillingness to believe opposed to sufficiently proposed faith. Wherefore the will, even gravely sinful, by which someone would be unwilling to hear the faith and Christian doctrine, would not yet be the proper sin of infidelity, because, with that will, there could stand an efficacious will of believing most firmly the revelation, as often as it was sufficiently proposed.

— Contrary infidelity is customarily distinguished as threefold: either that of him who has never received the Christian faith, and it is paganism (under which name Islamism is then also contained); or that of him who received that faith in type, and it is Judaism; or that of him who received the Christian faith in baptism, and it is heresy or apostasy. Yet apostasy signifies a more complete withdrawal from the Christian faith. But so that the infidelity may be contrary, it is necessary that the pagan, the Jew, or the one enrolled in heresy have resisted the truth sufficiently proposed.

On Heresy. — Heresy, in the broadest signification, is an erroneous judgment against faith, committed by him who has received the baptismal character.

By that erroneous judgment, what is false or doubtful is pronounced concerning something which, as revealed by God, he himself must believe: whether it has been proposed by the Church, or not.

Wherefore heresy so accepted is divided into heresy of the forum of God alone and heresy of the exterior forum, or canonical heresy. The former is merely internal heresy, or even exterior heresy, but one regarding revealed truths which have not been proposed by the Church: whether they are in the revealed sources but not yet authentically defined, or whether they have been privately revealed. The latter, or canonical heresy, is committed through external withdrawal from the social magisterium divinely constituted for the authentic proposition of revelation (Cf. Billot, *De Fide*, at thesis XXIV). This is heresy properly so called, whether it takes place through adherence to a sect separated from the Church, or through full repudiation of Christian revelation (which more strictly is called apostasy), or through the denied assent of faith even to one article which the Church has proposed as a dogma of faith.

Each heresy, both that more broadly and that more properly so called, can be material and formal. Material heresy is that of one erring without pertinacity, without judgment of credibility, and without a will averse from the formal object of faith; formal heresy is that of one erring pertinaciously either concerning some other revealed thing or concerning the authority of the Church; that is, of one erring with a will averse from the formal object of faith, or unwilling to believe what has been

sufficiently proposed to him as revealed, or even what would be sufficiently proposed. Hence, c. 1325, § 2: "After baptism has been received, if anyone, retaining the Christian name, pertinaciously denies any of the truths to be believed by divine and Catholic faith or doubts concerning it, he is a heretic; if he totally withdraws from the Christian faith, he is an apostate..."

In the canonical forum, all are presumed formally heretics who knowingly withdraw from the authority of the Church proposing dogma. But the proposition can be made either by the solemn definition of an ecumenical Council or of the Supreme Pontiff speaking ex cathedra, or by the ordinary and universal magisterium. For: "c. 1323, § 1. All those things are to be believed by divine and Catholic faith which are contained in the written or handed-down word of God and are proposed by the Church, whether by solemn judgment or by the ordinary and universal magisterium, as divinely revealed and to be believed. § 2. To pronounce a solemn judgment of this sort belongs both to an Ecumenical Council and to the Roman Pontiff speaking ex cathedra."

Corollaries. — 1. Canonically, a heretic is one who externally indicates as false or doubtful what is proposed by the Church to be believed; or what is undoubtedly believed by the faithful to be contained in Scripture. For the Church proposes the whole of Scripture to be believed.

2. Canonically, he also is a heretic today who, being ignorant of what the Church says is to be believed, utters these words: "Whatever the Church holds concerning this point, I deny it." For by these words he denies the infallibility of the Church, which is a defined dogma.
3. He is a heretic only before God, and consequently immune from censures, who by a merely internal act rejects an article defined by the Church: for example, the Most Holy Trinity; or who even externally denies what he falsely thinks has been defined by the Church: for example, that the Blessed Virgin was virginally conceived by her mother.
4. He is not a heretic who, after hearing some proposition of dogma, turns his mind away and abstains from judgment. Yet he will easily be a heretic before God, insofar as the reason for his silence is this: that, notwithstanding the definition, he virtually esteems the matter doubtful. He who labors under affected ignorance, whether concerning the authority of the Church or concerning an article defined by the Church, insofar as he rejects investigation, will be before God a heretic or not according to the interpretation of his will, which could have been that of believing if he knew the article to be revealed, and consequently merely of fleeing a sufficient proposition, or that of not believing in any case.
5. He who through gravely culpable ignorance or neglected investigation denies what the Church in reality has defined is not formally a heretic, since pertinacity is lacking. Indeed he can be called materially a heretic only improperly, since he preserves the rule of faith and continues to belong to the very body of the Church. Cf. Billot, *De fide*, before thesis XXIV, p. 348.
6. Heresies among themselves, as such, do not differ in species; neither do heresy and apostasy; nor contrary infidelities. Cf. Lehmkuhl, I, 413.
7. He who says: "If the Church were to define some such thing, manifestly absurd, I would not believe it," is not a heretic, because he does not act against conscience, unless he wished to affirm that it could happen that the Church define some such thing: which is not to be

presumed. Cf. concerning a similar case, Lugo, *De fide*, d. 17, n. 83; Ballerini-Palmieri, t. 2, tr. 5, c. 4, n. 91.

Wherefore those who are anxiously troubled about suggestions of this kind can easily be calmed, but they are to be dissuaded from imagining cases of this kind. But the response which such a suggestion manifestly deserves is this: The Church will propose nothing absurd to be believed.

8. He is not a heretic who only exteriorly denies the faith or adores an idol. For he himself does not err. Nor does he incur censures, although in the external forum he is to be regarded as a heretic.

Scholia. — 1. In a man not baptized, the act of faith is necessary so that he may be informed by the infused virtue of faith. Wherefore, whether in a culpable or inculpable way the judgment of credibility is lacking to him, the faith necessary for salvation is wanting in him. But he who, even unconsciously, for example in baptism, has received habitual faith will not be despoiled of this without a will formally contrary to faith. Therefore habitual faith is more easily preserved by an adult than it is acquired.

2. Since, in order that you may elicit an act of faith, to the judgment of credendity there must accede a free act of the will commanding the act of faith, it can happen that someone recognizes the truth of religion, yet refuses to believe, and thus becomes formally a heretic. This formal heresy at the same time contains a great sin of pride, by which someone rejects a supernatural vocation, or is unwilling to subject himself to the authority divinely constituted, or (which seems scarcely possible) is unwilling to believe God whom he knows as revealing.

To deny faith to a truth which is known as revealed is a sin against the Holy Spirit, which is rarely committed; but if it is committed, it will also obscure the judgment of credendity. For the most part, however, the very judgment of credibility is absent from the non-believer, or has been destroyed in him. Therefore most unbelievers are guilty of neglected diligence in seeking out the truth, or they have a judgment clouded by passions. But such persons are not formally heretics in the forum of God.

3. They are accustomed to ask whether, without the formal sin of heresy, some Catholic can come to persuasion concerning the falsity of the Catholic Church or of Christian revelation, or whether a formal sin against faith must always precede that apostasy. The matter is disputed.

That "those who have received the faith under the magisterium of the Church can never have any just cause of changing or of calling the same faith into doubt" was defined by the Vatican Council, session 3, chapter 2 (*Denz.*, n. 1612). But this definition can be restricted to an objectively just cause. Wherefore, after Tanner, *De Fide*, q. 2, dub. 5, n. 139; Platelius, *De Fide*, n. 61; Tanquerey, n. 659, thinks that it can happen per accidens that, without a formal sin against faith, imprudence may lead a Catholic to unbelief; indeed he seems to deny the necessity of grave fault itself. Aertnijs-Damen, n. 323, Quaer. 3, concedes the same, abstracting from the gravity of the sin, and alleging Pesch, *De Fide*, n. 383.

We think that a distinction must be made between doubt and contrary persuasion. That someone, because of objective imprudences of readings and conversations, and because of a less pure life, can come to a state of doubting and of a certain rather universal skepticism, we judge must be conceded; but that someone, without violence done to his own intellect, or without an internal lie which almost necessarily contains contempt of divine authority and consequently the formal sin of heresy, should come to contrary persuasion: this seems to us psychologically impossible. For this seems too much to be repugnant to the force of the arguments for faith and to the testimony of the soul naturally Christian.

Nor, in a man instructed in a Catholic manner and taught concerning his duties, do we think it must be affirmed that this can happen without grave sin.

— This is noteworthy today, because of the subtle investigations which are being made concerning the salvation and psychology of non-Catholics: according to the opinion of C. de Lugo, ibid. n. 200-201, from formal heresy or contrary infidelity there can be excused a man who, from culpable ignorance, yet is truly persuaded that no church, but only private revelation, is to be believed, provided that he preserves the will of believing God as often as His revelation is evidently credible; indeed even one who considers any revelation of God impossible. Such a man certainly cannot elicit an act of faith; yet he can have a conditioned will of believing God if God could reveal something to men. For by this will he is not injurious to the divine veracity. Wherefore, although he is not a Catholic or faithful person absolutely, if he had faith infused in baptism, he has not for that reason lost it, and can be called a Catholic or faithful person conditionally, because of that will. Cf. Ballerini-Palmieri, l. c. n. 94. But these things, as is clear, are not to be proposed everywhere to the faithful.

— He who has been instructed in a non-Catholic sect does not necessarily lack the supernatural virtue of faith; and, as long as he does not doubt, he is only materially a heretic, is bound by no special obligation, nor is he truly excommunicable. - If he seriously doubts, he ought to inquire; but if he has culpably neglected this, whether through carelessness, or levity of soul, or fear of discovering the truth and apprehension of the difficult duty which would follow from it, he will indeed sin, and per se gravely, against faith, but only privatively, not yet contrarily through heresy. - He will then only be formally a heretic if he neglects inquiry because he absolutely refuses to embrace Catholic truth, even if he recognized it. Cf. Lehmkuhl, I, 425, 2.

Although, however, in soul, or because of good faith, he is Catholic, nevertheless one enrolled in a heretical sect cannot be admitted to the sacraments before, after the errors have been rejected, he has been reconciled to the Church. This is expressly established by canon 731, § 2, so that the more benign opinion which Laymann, l. 2, t. 1, c. 13, n. 2, and after him Busenbaum, *De praec. Fidei*, dub. 3, Resolves 5, and Ballerini-Palmieri, t. 2, tr. 5, c. 4, n. 97, held concerning the unlearned can no longer be admitted. Yet the severity is tempered in danger of life, in the manner which will be stated; nor is it to be applied to those who wish to come to the Church at an age at which formal abjuration is not yet required by the Church, that is, who have not yet completed fourteen years from birth (S. Off., Nov. 1878, *Coll. P. F.*, 1st ed. n. 660; 8 March 1882, *Coll.*, 1st ed. n. 1680; 2nd ed. n. 1566).

Observe how differently Catholics and most non-Catholics stand when they doubt in the matter of faith or religion. Indeed, not only to cast off faith but even to have it as doubtful is lawful for neither without sin; but doubt concerning the Church, or concerning her authentic magisterium, or concerning an article proposed by the Church, is already, for a Catholic faithful person, doubt

concerning faith; while for a non-Catholic of the Protestant Reformation, since, the authentic magisterium being excluded, he admits private interpretation of Sacred Scripture, doubt concerning his church or concerning a point as contained in Sacred Scripture is not yet doubt concerning faith. Now indeed from our human conclusions there is by no means excluded a reason for doubting, which, when there is question of the assent of faith, can never be had. Wherefore, when doubt has arisen concerning the truth of their sect, non-Catholics themselves are logically led to an examination whose fruit, with the help of the grace of God, if serious effort is applied, will easily be recognition of the true Church and conversion.

— Heresy, apostasy, and heresies among themselves do not differ in species; nor do sects, insofar as they err; yet they differ insofar as they exercise diverse superstitions contrary to the virtue of religion, or are insulting to God in diverse ways. Wherefore he who has culpably adhered to a sect must indicate that sect, if, however, he ever thought about those diverse malices [1].

[1] Already from the fact that it is exercised by non-Catholics as such, divine worship becomes illegitimate (Lehmkuhl, *Casus*, I, 443). Yet I would not call this superstitious. These things therefore must be distinguished.

— Conversion of a person per se says the will of directing oneself wholly toward one end or term. Therefore the fuller the aberration was, the stricter is the conversion of him who, error having been laid aside, embraces the truth. Hence he who, ignorant of God, cared only for temporal things, is converted most fully when he begins to live for God. A pagan is converted more fully than a Mohammedan or a Jew: these are converted insofar as they intend to serve Christ or to glorify Christ in all things; a Mohammedan or a Jew is converted more fully than a heretic, who only has to convert himself to the Church.

Moreover, for receiving a heterodox person into the bosom of the Church, these things are to be done in order:

1. He is to be instructed in the faith.
2. If, because he was not baptized or received a baptism certainly null, baptism is to be conferred absolutely, no abjuration of heresy is required. If baptism is not to be repeated except perhaps conditionally, first a formal abjuration of the sect and profession of faith is to be made according to the formula which in the City is handed down by the Holy Office, outside the City by the Ordinary. The Ordinary of the place can permit that it be done not publicly but privately before two witnesses. (The minister can be one of the two.)
3. After the profession has been made, if the case demands it, baptism is administered under condition. Sacramental accusation, by which the penitence necessary for baptism is assisted, can be placed before this.
4. Absolution is given, conditioned or absolute, from heresy and connected censures. The form, otherwise not essential, is indicated in the written instruction which the minister will receive.
5. Confession is made, or, if accusation has already been made, it is resumed in a few words, and sacramental absolution is conferred. As is said in the tract on Penance, a probable opinion exempts from complete accusation those whose baptism was truly doubtful, so that with true probability, in the repeated conferral of baptism, the sins prior to it were deleted. Cf. La Croix, l. 6, p. 1, n. 324; Bucceroni, *Theol. moral.*, III, 672, 672-bis; Ballerini-Palmieri, *Op. th.*, V, 22. Yet

the opposite opinion is held by Lehmkuhl, II, 425 sq.; by Noldin, III, 226; by Chr. Pesch, S.I., *Prael. Dogm.*, VII, 394 ss.; by Zitelli, *Apparatus*, p. II, n. 721 (ed. 1897), etc.

6. If he is an adult, no grave cause standing in the way, let him immediately hear Mass and communicate. Cf. Code c. 753, § 2. (Immediately can be taken morally. A just cause suffices so that this not be done immediately.)

N. B. If any have not completed the age of fourteen years, they are simply admitted, without abjuration, to baptism or other sacraments, and they are not absolved from censures in the external forum.

On Temptations Against Faith. — Properly, only a free faculty is tempted. But it is tempted when it inclines spontaneously, or by an act which is called primo-primus, toward an illicit object. Therefore a temptation against faith is not yet formally had because some difficulty, even without a positive solution, is presented to our intellect; but we begin to be tempted if, because of a difficulty of this kind, the will inclines toward revoking the command by which the most firm assent had been commanded. Therefore those who, from a difficulty of this kind, are cast into fear concerning their faith are by no means actually tempted, since fear rather betrays affection for faith.

But temptation can be prepared by an intellectual difficulty. But when a true temptation of doubting concerning faith has arisen, he who by a contrary act of the will rejects the inclination to doubt or turns the mind away himself merits; he who in a semi-conscious way favors it sins venially; he who assents to it by deliberate doubt or denial becomes gravely guilty of a sin against faith by which faith itself is lost. Nor is it lawful to tolerate that inclination in the will as if by bearing oneself neutrally; but we must positively cast it away, because tolerance of a motion of the will makes that same motion deliberate. Cf. I, n. 72, 2.

He to whom an article to be believed has been proposed, and who experiences a difficulty concerning it, certainly cannot choose a neutral position, or positively suspend assent, or even deliberately and definitively abstain from an act of faith; but to defer the act of faith until he is better instructed, this is indeed lawful for him.

— You ask in what way that celebrated saying is to be understood: "Temptation against faith is to be conquered by flight." It is, unless we are mistaken, in this way.

a) Contrary to what can be done in less dangerous matters, and sometimes is advisable, namely, that we intentionally call up the object of temptation (for example, an occasion of anger or impatience) in order to win a more illustrious victory over it, here it is by no means expedient, after the occasion has been excited, to give place to a specious temptation against faith, so that we may as it were test and exercise our strength.

b) While the temptation itself is pressing, it will often be better at that time to divert the mind to other things, rather than to institute an examination of the difficulty.

But a formal general act of faith is by no means to be dissuaded, whether in the temptation itself, or before temptations which someone has foreseen as future. Yet often to protest concerning the faith in the temptation itself is in no way necessary.

And, after the temptation has receded, a quiet examination concerning the difficulty with which the temptation was connected is by no means to be disapproved; just as also a more skilled or more learned man is opportunely questioned.

Finally, the positive exercise of faith, even in daily conversation, by acts either formal or virtual, is altogether to be recommended.

Summary

— 1. Infidelity, or the state of him who does not believe, with an assent of faith at least implicit, the things which are to be believed by him, is negative or not culpable, and privative, or sinful. Moreover, privative infidelity is that which, although culpable, nevertheless does not exclude the will of believing the things which are revealed and sufficiently proposed. - Contrary infidelity is recognized by this exclusion, and is a grave sin in its whole genus, and removes habitual faith itself. - Yet others divide infidelity otherwise.

A threefold contrary infidelity is distinguished: that of pagans, who are unwilling to receive the Christian faith; that of Jews, who are unwilling to complete their faith in Christ; and that of heretics or apostates, who withdraw from the faith received in baptism, wholly if apostates, in part, that is, retaining at least the Christian name, if heretics.

2. Heresy taken more broadly says an erroneous judgment, by which a baptized man pronounces false or doubtful what he ought to believe to be revealed by God. It then embraces denial or deliberation concerning any truth whatever which he ought objectively to believe, and it can be entirely internal. Taken more strictly, it says an exterior withdrawal from the truth which the Church proposes as to be believed as revealed, or a repudiation, externally manifested, of the magisterium of the Church.

Heresy can be material, in him who errs without pertinacity, or who is not conscious of denial or doubt opposed to revealed truth; and formal, in him who errs with a will averse from faith, that is, of not believing revealed things. Formally heretics are presumed to be all who deny or call doubtful a dogma which they know to have been proposed by the Church. Improperly is he called materially a heretic who, adhering to the magisterium of the Church, errs concerning the dogmas of the Church, so that because of antecedent ignorance he denies a point defined as of faith. Even material heresy can be gravely culpable in its cause.

Formal heresy and apostasy, and heresies among themselves, do not differ in species; nor do sects as erring: yet these can exercise superstitions of various species.

3. The fuller the aberration was, the more truly he is said to be converted who, error having been laid aside, embraces the true faith. Moreover, in the conversion of a heterodox person these things are to be furnished: instruction in the faith, formal abjuration of the sect and profession of faith; conditional baptism, if the former is presumed or proved to be doubtful; conditional or absolute absolution from heresy and connected censures; confession, or, if before baptism it was made, a brief resumption of the accusation, and sacramental absolution; finally, if he is an adult and nothing stands in the way, communion through the Mass which he will immediately hear.

Minors who have not completed fourteen years are admitted without abjuration; nor in the external forum, since they do not contract penalties latae sententiae, are they absolved from censures.

4. Temptation against faith is properly had when the will itself inclines toward deserting faith by denial or doubt. Temptations of this kind are not deliberately to be called up; but in temptation, or before temptation, it will be expedient to elicit an act of faith, and to turn the mind away from the object of temptation. Afterwards, a quiet examination of the difficulty and questioning of a more learned man are to be recommended. To this add the positive exercise of faith.

Chapter II: On Other Sins Against Faith

— By the will of not believing with supernatural faith even those things whose revelation has been sufficiently proposed, there is constituted a sin directly contrary to faith, necessarily grave, by which the sinner is despoiled of the habit itself of faith.

But several other sins, of various gravity, can be committed against faith.

1. Sin is committed by omission of the profession of faith prescribed by divine or ecclesiastical law; - by omission of an act of faith to be elicited from divine law; - by omission of diligence in acquiring a relatively sufficient knowledge of faith; - by omission of diligence in seeking the true religion.

These sins, grave in their own genus, can be excused from mortal sin not only by error of conscience, but also by smallness of matter.

Sin is committed by external denial of faith or shame concerning it. Denial is grave in its whole genus; not so shame.

Sin is committed by rashness or imprudence by which faith is exposed to danger.

— You ask in what way he sins who rejects definitions concerning truths not revealed, or defends propositions noted below heresy?

1. From dogmatic theology we know that the infallibility of the Church extends to truths which, although they are not contained in the deposit of faith, are nevertheless so connected with the same that without them that deposit would not be safe. Although these cannot be believed by divine faith, nevertheless the virtue of divine faith renders obedience, even internal obedience, necessary to definitions of this kind. That obedience is called religious-Catholic. The motive of assent is infallible authority, constituted by God, to which we are all subject. Some use the words ecclesiastical faith.

Therefore, he who knowingly rejects an infallible declaration sins gravely by a sin of disobedience or rebellion toward the Church: which sin is opposed to the very virtue of faith, since our very subjection is prescribed for safeguarding faith. Cf. Palmieri, *Op. theol.*, t. 2, tr. 5, c. 4, n. 106.

2. A proposition condemned as scandalous, savoring of heresy or error, offensive to pious ears, is not necessarily false. Then directly only the enunciation of the thesis is proscribed. Wherefore he who professes it sins against religion, while he refuses obedience to the religious power: which obedience is necessary from religion; he sins against charity, insofar as he is a scandal to others, or weakens the unity of the Church; finally he sins against the virtue which that proposition directly harms. Cf. Lehmkuhl, I, 418.
3. Even if the condemnation has proceeded from a non-infallible authority, for example, from a Sacred Roman Congregation, besides the external disobedience against religion which is committed by defending and professing the proscribed theses, for the most part sin is also

committed by rashness through internal dissent, except in some rare case where assent can prudently be suspended until infallible authority has pronounced on the matter. Cf. Lehmkuhl, I, 419, and the things said I, 317. - Suarez, *De Fide*, d. 19, and Lugo, *De Fide*, d. 20, n. 133, treat of this question.

N. B. The Code, c. 2317, strikes with grave penalties, but ferendae sententiae, those who pertinaciously, whether publicly or privately, teach or defend doctrine condemned by the Apostolic See (that is, by the Roman Pontiff or by a Sacred Roman Congregation; cf. c. 7) or by a General Council, but not as formally heretical; and c. 2331 § 1 likewise says that he is to be punished with suitable penalties who pertinaciously does not obey the Roman Pontiff or his own Ordinary when they legitimately prescribe or prohibit something.

2. What the individual notes signify is proposed in dogmatic theology. Lehmkuhl, I, 116, sets forth the matter in summary this way: "Erroneous is opposed to a thesis theologically certain, or to one which, by means of another truth (naturally certain), certainly follows from revealed doctrine." He who sustains it is suspected of heresy and is presumed a heretic.

Near to heresy is that which is not only erroneous, but is also opposed to a thesis which is called next to faith, because it is held as revealed by many, yet not by all.

"Near to error is opposed to that which is gathered most probably from revealed doctrine."

Rash is opposed to the common doctrine of theologians, which is deserted without solid reasons and therefore rashly.

— You ask concerning the sin of him who adheres to liberalism.

1. Even setting aside extreme liberalism, which in reality is the same as pantheism or rationalism, objectively he is a heretic who either fully embraces the doctrine of liberalism, even that which they call milder, or holds its chief heads: for example, the full independence, in Christian society, of the State from the Church and the subjection of the Church under the authority of the State. For this is altogether repugnant to the primacy of the Roman Pontiff and to the magisterium of the Church here on earth: both of which are dogmas of faith. Cf. Palmieri, *Op. theol.*, t. 2, tr. 5, c. 4, n. 107.
2. He who holds only the secondary heads of liberalism will be objectively a heretic or not according to the quality of his error. Thus he will be a heretic who denies that the doctrine concerning the sacrament of matrimony is to be held by faith (cf. propositions 65, 66, 68, 73 of the Syllabus); he will not yet be a heretic if he absolutely defends the present opportuneness of the "modern" liberties against proposition 77 of the Syllabus. In doubt, what is minimum is to be held. Yet he sins against faith, because for the most part he will defend a doctrine reprobated by the infallible magisterium.
3. Subjectively, not rarely, because of ignorance, even though often gravely culpable, the liberal will be excused from formal heresy. In certain points, for example in relations between the Church and the State, he can more easily be in good faith.

4. The confessor, from the subjective state, will judge concerning the guilt and concerning the censure of the penitent. If he has detected good faith in a man who otherwise satisfies the duties of Christian life, the quality of the error under which he labors, the greater or lesser scandal which he has given, the hoped-for fruit and the harm to be feared from the error being denounced will teach him the prudent norm of questioning and admonishing. Cf. Palmieri, l. c. n. 103-108. Cf. the encyclical *Libertas* of Leo XIII, 20 June 1888.

— A similar question which can be raised concerning socialism is to be solved in almost the same way. There is a certain integral socialism, which sends religion away to private life, rejects authority, and repudiates marriage for free love: and this cannot be defended without heresy.

But restricted to external temporal goods and their possessions, it puts forth some tenets which are certainly condemned by the infallible magisterium of the Church, as if you should deny that external things which are a source of revenues can be justly possessed. But other tenets, by which, the previous order not being reprobated, a new order, a new regime of goods is proclaimed, are to be examined more cautiously. For besides rash and to-be-rejected points, they easily contain points which can either be disputed or even usefully introduced by a legitimate way.

The very coerced adherence of many workers to socialistic societies will move us so that in confession we act prudently, lest we sin either by scandalous connivance or by destructive severity. The instructions of the Ordinaries of places must also be diligently attended to.

Summary

— Besides contrary infidelity, which is committed by a will excluding faith, sin can be committed: a) by various omissions of the profession of faith, of acts of faith, of diligence in the knowledge of faith, in seeking the true faith: which sins are grave in their own genus; b) then by denial (always grave) of faith, by shame concerning faith; c) by rashness and imprudence in reading to be done, in frequenting companions by whom faith is exposed to danger.

To the virtue itself of faith is opposed the grave sin of disobedience committed by him who knowingly rejects infallible declarations, even outside faith strictly so called; for the most part he also sins by rashness who internally dissents from doctrinal decrees of a Sacred Roman Congregation, besides the sin of external disobedience, which also is dangerous to faith. He who violates decrees by which the propositions themselves or at least their enunciations are condemned sins variously, but not necessarily against faith.

One adhering to liberalism, even if he is not always objectively a heretic, is convicted of sinning against faith. Yet a prudent confessor will consider the subjective persuasion and all the circumstances, so that from them he may gather the manner of questioning and admonishing.

In almost the same way the question concerning socialism is to be solved theoretically and practically.

Title V: Legal Safeguards of Faith

General View. — Faith, a precious gift descending from the Father of lights, which the faithful carry in earthen vessels, the Church must fortify with safeguards, and she does not omit to do so.

Already for this end the profession of Faith, the abjuration of modern errors, is prescribed to many, so that rectors and leaders may not be devastators but upright and secure leaders and teachers of the faithful.

Then the laws concerning the censorship and prohibition of books admonish the faithful which writings they may approach safely and with an unoffending foot; which other writings are in no way, or only very cautiously, to be taken up. These laws are explained III, n. 889-906.

To this also pertains the proscription of propositions.

Then by the medicinal penalties themselves of censures, the faithful are taught to guard themselves from heresy and heretics, besides vindictive penalties which, as denounced, restrain heretical audacities.

Finally faith is protected by prohibitions which regard communication with unbelievers and non-Catholics, or disputations with heretics and exhibitions of religions.

Since the other things have already been declared, we must briefly discuss both of the latter arguments.

§ 1. Censures Against Heresies

To omit here penalties ferendae sententiae:

I. Excommunication of Apostates and Heretics. — From c. 2314, § 1, all apostates from the Christian faith and all and individual heretics incur, by the very fact, an excommunication reserved to the Apostolic See in a special way.

Apostates are all those who, after baptism has been received, totally withdraw from the Christian faith. Thus from c. 1325, § 2. Therefore even one who has been enrolled in a heretical sect can canonically become an apostate. And, for someone canonically to be an apostate, it is not necessary that he embrace a pagan religion, say Buddhism or Islamism: it suffices that he become a theosophist [1], pantheist, rationalist, or completely unbelieving.

All and individual. The Legislator seems to have used this abundance of words so that he might reach not only the followers of various sects (who seem to be designated by the words all heretics), but also those who separately and privately err pertinaciously in faith (individual heretics).

Heretics are not only those who deny a truth of faith, but also those who hold it as doubtful (c. 1325, § 2).

Yet only external heresy or apostasy is punished by ecclesiastical penalties. But because the penalty is contracted by the very fact, altogether hidden heresy externally and culpably expressed (as if someone

utters it alone in a room) gives place to excommunication. Culpably expressed, I say, because he who, for the sake of seeking counsel, should manifest his internal heresy would escape excommunication.

Moreover, only canonical heretics are struck with excommunication. Therefore it is necessary that they have erred pertinaciously concerning a truth which the Church proposes as revealed. But before God, or in reality in conscience, only formal heretics are struck, while those enrolled in a heretical sect are presumed formal in the external forum and are treated as such.

In the same external forum simple ignorance (not crass) also excuses from contracting the censure.

Absolution in the internal forum per se requires a faculty for cases specially reserved to the Holy See, with the general norms remaining firm which permit all confessors to give absolution with the burden of recurring within a month to the Holy See, or to a Superior furnished with power, or to a privileged confessor; and with the exception of danger of death.

Yet because the Ordinary of the place is also the judge in criminal matters in first instance, the delict of heresy can be brought to his external forum. A voluntary exterior confession of the guilty person also suffices for this. But then one repenting (for withdrawal from contumacy is necessary for absolution from censures) can be absolved in the exterior forum by the Ordinary of the place himself (not however by the Vicar general without a special mandate) or by an ecclesiastical man whom the Ordinary has specially delegated. This absolution, from c. 202 § 1, also removes the censure in the internal forum, so that the sin can now be remitted by any confessor. Juridically performed abjuration is required before absolution: for this it is enough that it be made before the Ordinary of the place, or his delegate, and two witnesses. Those things which must be observed by law are to be observed: salutary penance to be imposed, reparation of scandal, separation from the sect, denunciation, if any has been prescribed, for example, from c. 2336, § 2.

Nor can only one's proper Ordinary, but any Ordinary of a place, impart that absolution (Cappello, *De censuris*, n. 68).

[1] By the name of theosophy there comes a certain rather little-defined syncretism, which, from religions or religious experiences explored and compared among themselves, attempts to extract, as it were, what is fundamental to religion, what is essential and consequently common to all religions, and thus to exhibit a synthetic account for the only true, universal, perpetual, and wholly human religion. Cf. Giovanni Busnelli, S.I., *Manuale di Teosofia*, 4 vols., Rome, 1909-1915; *Dottrine teosofiche e dottrina cattolica*, Rome, 1919; Ill. D. Janssens: *Peut-on etre a la fois, chretien et theosophe?*, Paris, 1923.

II. Those Suspected of Heresy. who, after they have been juridically admonished, have not removed the cause of suspicion, and for that reason have been prohibited from legitimate acts, or, as clerics, have been suspended from divine things; who, I say, within six months from the penalty contracted, have not amended themselves, are held as heretics, and consequently contract the same excommunication explained above.

Those suspected of heresy are understood as juridically such, from an express canonical disposition. They are enumerated III, n. 916.

§ 2. Communication with Unbelievers and Non-Catholics

— 1. Who in this place are understood to be unbelievers. The question is posed concerning those who profess a false worship or have adhered to a non-Catholic sect. For concerning unbelieving

Catholics no special prohibition exists. The common laws of prudence are to be observed.

2. But communication signifies a common action. Therefore to ask concerning licit communication with non-Catholics is to ask whether it is lawful or not for Catholics to perform certain things in common with them. Communication, therefore, is a certain genus of cooperation which consists in moral participation in some action. Thus in the celebration of Mass those communicate who have asked for that Mass by stipend, who minister to the priest, who respond to his prayers or chant, who formally hear it. But they do not formally communicate, but merely cooperate, per se, who during Mass play musical instruments or the organ, who announce Mass by bell, words, or writings, nor those who assist the chant with the organ. In this place we are treating only of communication; afterwards we shall consider cases of cooperation.
3. What communication is attended to. Today communication in civil matters with non-Catholics is forbidden by no law per se. Therefore the question is restricted to communication in sacred matters. But the matters can be the sacred functions of Catholics, private Catholic prayers, and the sacred things of non-Catholics. It is useful here to separate carefully positive law from natural law.

a) In the sacred things of Catholics. These things can be private prayers: scandal being excluded, today we are in no way forbidden to pour forth with non-Catholics private prayers which are good in themselves.

They can be solemn functions. In these, no more than other excommunicated persons, non-Catholics can have a formal or active part. Wherefore we cannot admit them to minister at sacred things, to respond to the prayers of the priest. Observe, however, that baptized persons before the completed age of fourteen years are not formally held as non-Catholics. - To passive assistance we are not forbidden today to admit non-Catholics. Thus it is tolerated that in Catholic colleges, where non-Catholics are instructed mixed with Catholics, the former be present at the sacrifice of the Mass. But they can be formally invited to hear sermons. They are not prevented from playing musical instruments or the organ. From receiving the sacraments they are per se excluded, except matrimony and danger of life. Cf. III, 195.

b) In the sacred things of non-Catholics. alpha) By the very law of nature, it is intrinsically evil to celebrate a rite properly non-Catholic or erroneous worship, or to profess or seriously simulate erroneous worship, or formally to ask for the celebration of erroneous worship. For in a rite, insofar as it is heretical, superstition properly so called is contained. But if non-Catholics perform certain things altogether rightly, just as Catholics do, grave authors deny that communication in these sacred things as such is illicit. Cf. Suarez, *De Fide*, 21, 3, 4; Lugo, *De Fide*, 22, 1 and ff.; Benedict XIV, *De Syn.*, 6, 5, 2.

beta) Because of connected harms, whether one's own or the neighbor's, the same communication will be illicit. But the evils to be feared are: authority added to heresy or falsity, propagation of indifferentism. These evils per se are those of many: which must be observed in estimating an excuse.

gamma) Then by positive law, because of the common good, more severe prohibitions accede.

4. Can. 1258 § 1 has this: "It is not lawful for the faithful in any way actively to assist or to have part in the sacred things of non-Catholics." Therefore, at least by positive law, that commerce in the sacred things of non-Catholics, even when rightly performed, is forbidden, which several approved theologians and canonists deny to be illicit per se.

Corollaries. — 1. Not even in the agony of death is it lawful to admit a non-Catholic minister who in his own non-Catholic rite brings or ministers sacraments even validly.

2. Outside danger of death, in which, scandal being excluded and another being lacking, this will be lawful, we are forbidden to ask from non-Catholics sacraments administered in the Catholic rite, for example baptism; to hear the Mass of a schismatic; to receive communion from his hands; to confess our sins to him. Wherefore, neither is it lawful to act as godfather in a baptism which a heretic confers: for the godfather asks for baptism.

Matrimony is excepted, which, after dispensation has been obtained for a grave cause, is permitted to be contracted with a non-Catholic, although, if both have been baptized, both spouses, and consequently the non-Catholic, are ministers one to the other. Yet this is not lawful to contract before a minister as such (otherwise if before him as a civil official). But if this is done, a Catholic cannot be a witness properly so called.

On Merely Material Presence. — 1. From c. 1258 § 2: "Passive or merely material presence can be tolerated, for the sake of a civil office or honor, for a grave reason to be approved by the bishop in a doubtful case, at the funerals, weddings, and similar solemnities of non-Catholics, provided the danger of perversion and scandal is absent."

Therefore in acts which d'Annibale, I, 110, calls mixed, because they are also accustomed to be performed for the sake of a civil office, passive presence can be tolerated for a grave cause. But if, with attention given to the quality of the person, for example of a priest, or to the circumstances, honesty, because of scandal, has become doubtful, the Ordinary of the place will have to resolve the doubt.

That doubt will more easily occur in merely civil funerals of those who, having been baptized Catholic, have rejected the sacraments, especially if the insignia of a condemned sect are also displayed, or, what is worse, are placed upon the bier itself. The ceremony itself then not rarely ends in formal impiety. And it is clear that in cases of this kind it belongs to a Catholic soul that we incline toward abstention, as far as can be done. Once the signification of impiety is excluded, concerning merely civil funerals the things said concerning the funerals of non-Catholics are valid.

A grave cause of assistance can be furnished by service itself, provided that the non-Catholic temple is not frequented in such a way that the servant or maidservant appears to be non-Catholic. Cf. Lehmkuhl, I, 809. Wherefore Genicot, I, 200, and R. P. Wouters, *Ned. Kath. St.*, 1919, permit that a Catholic maidservant hold a little child while he is baptized by a minister.

Passive assistance is tolerated. Therefore it is not lawful actively to cooperate in the rites themselves. Yet genuflection before a tabernacle where there are true consecrated hosts is not participation in a non-Catholic rite; nor is private honor rendered to a sacred image of the Blessed Virgin Mary; nor even, as it seems to us, an act indifferent in itself which urbanity itself almost demands: as if in a temple you bare the head, or rise when others rise, lest by sitting you be judged injurious.

Wherefore, in non-Catholic places, all scandal being excluded, a visit to the Most Holy Sacrament in a church of schismatics can be made privately. And if someone, for a grave reason, assists at a funeral function of which a Mass is a part, he will not be able to omit the reverence due to Christ present at the consecration and after the consecration, while taking care that, as to the rest, he separate himself sufficiently from the minister.

2. Even where a grave reason is lacking, he who, scandal, danger of faith, and active participation being excluded, should wish from curiosity to be present at the functions of non-Catholics and to observe a sermon, will have committed nothing grave per se, although regularly this is not lawful.

But the circumstances can suggest a stricter prohibition. Thus the Instruction of the Cardinal Vicar of the City, 12 July 1878, n. 5, most strictly prohibited anyone knowingly, from mere curiosity, from entering the halls and temples of Protestants at the time of conversations or conferences; and declared that those sin gravely who from mere curiosity hear the conferences of Protestants, or even purely materially assist at non-Catholic ceremonies. Observe that, in that decree, schismatics are not named.

— Concerning the admonition to be made when we are asked, and concerning the good faith not to be disturbed of those who in very difficult circumstances do, without danger of their own ruin, things which in themselves are not lawful, the general rules are to be applied. And the Holy Office applied them on 26 April 1894 to children who in Russia were compelled to participate in non-Catholic rites (*Coll. P. F.*, n. 1868).

Concerning these points, the following are to be read attentively in *Coll. Prop. Fid.*: Instr. P. F. 1729, n. 311; and S. Off. 1752, n. 384; resp. 22 Aug. 1900, n. 2093; and the things which Lehmkuhl has, I, 809 ff.

§ 3. Disputation with Non-Catholics, and Exhibitions of Religions

— Not indeed for investigating the truth, but for persuading others of it or for vindicating its honor, it is lawful to dispute concerning faith with heretics, when the circumstances of doctrine and persons are such that fruit can be hoped for at least among the hearers.

Yet because imprudent disputation can harm greatly, c. 1325 wisely enacts this: "Let Catholics beware lest they have disputations or conferences, especially public ones, with non-Catholics, without permission of the Holy See, or, if the case urges, of the Ordinary of the place." Already in the seventeenth century the Sacred Congregation de Propaganda Fide more than once responded that, without consulting it, formally public disputations were not to be held even by clerics. And it is clear per se that the prohibition ceases when necessity, or, as it seems, great utility of faith, demands something else, and the Ordinary of the place cannot be approached. Nor rarely today will it be expedient, by a wittily spoken word, to blunt the audacity of the impious; yet per se it will be less opportune to admit longer controversies before witnesses, which take place without any intention of learning anything: in these, self-love itself impedes fruit. But the Code treats of a disputation which is entered into expressly concerning a dogmatic matter which non-Catholics deny. Disputations are not touched which occur incidentally, on the spur of the moment, when an occasion is given; nor private conferences which are directed not to conquering a person but to converting him. Concerning

controversial writings, only the rules concerning the censorship of writings will have to be observed. Thus also Genicot-Salsmans, I, n. 201, VI.

— Much less do simultaneous exhibitions of religions, as they are called, regularly seem to be approved, in which each in his own order sets forth his own tenets, and then, without any refutation, they calmly hear apologies of other doctrines. For by these per se indifferentism is fostered, and, at least in appearance, truth and counterfeit religions are held with equal right and honor. Cf. the letter of Leo XIII to the Apostolic Delegate of the United States of America, 18 September 1895 (*Nouv. Rev. Theol.*, 28, p. 79). The Holy See greatly opposes this assimilation. Wherefore by decree of the Holy Office, 4 July 1919, Catholics were ordered to abstain from a society for procuring the unity of Christianity, and the letters of 8 November 1865 on a similar argument were again published (*A. A. S.* 1919, XI, 309).

Summary

— Besides the prescribed professions of faith, the rules of the Index, and condemnations of propositions, the legal safeguards of faith are:

I. Penalties latae sententiae. 1. Apostates and canonical heretics who in a culpable way express exterior heresy even secretly are struck with excommunication which, in the internal forum, is specially reserved to the Supreme Pontiff. Yet in the external forum, the guilty person confessing the delict can be absolved by any Ordinary of a place or delegate, those things being observed which must be observed, so that afterwards his sin can be remitted by any confessor.

2. Those who are canonically suspected of heresy, unless they are amended within six months, to be counted from the sentence which, after admonitions, punished them, contract the penalties of heretics.

II. Prohibited communication with non-Catholics. 1. Non-Catholics are understood here as all those who, baptized or not baptized, are outside the Church because of the sect to which they have adhered. But formal adherence is not judged to have been completed before the completed years of puberty. Communication signifies not every cooperation, but an action done in common. Today, communication with non-Catholics in civil matters and in private prayers is lawful per se. Non-Catholics cannot actively participate in Catholic sacred things or receive the sacraments (outside the necessity of danger of life), if you except matrimony. Today they can be admitted merely to assist at sacred things, indeed even, with attention also given to ancient laws, be invited to hear sermons. It is never lawful to receive sacraments in a non-Catholic rite, or actively to participate in the sacred things of non-Catholics. By natural law it does not seem forbidden per se that you communicate in sacred things which non-Catholics perform rightly, as Catholics do. But this is forbidden by positive law, outside danger of death, in which the sacraments are to be received. Except also matrimony contracted with due dispensation, which, however, is not lawful to celebrate before a minister as such. Passive presence of Catholics in the sacred things of non-Catholics is permitted for a grave cause, to be approved by the bishop in a doubtful case; indeed one who from curiosity is present at them commits nothing grave per se.

2. Disputation with non-Catholics concerning a dogma which they deny cannot be entered into expressly, especially publicly, without permission of the Holy See, or, if the matter urges, of the

Ordinary of the place (c. 1325, § 3).

Nor, because of the danger of indifferentism, is a simultaneous exhibition of religions regularly approved.

Treatise II: On Hope

Utility. - From this treatise the moral theologian chiefly has to gather arguments for raising and increasing the souls of the faithful by perpetual hope and confidence, and criteria by which true despair and presumption contrary to the theological virtue are distinguished from other sins of the same name.

The order of speaking will be this: first we shall explain the notion, necessity, and use of hope; then briefly the sins against hope.

Title I: The Notion, Necessity, and Use of Hope

I. Notion. — Hope is a theological virtue by which, relying on the goodness, omnipotence, and fidelity of God in His promises, we are raised in soul to a certain expectation of beatitude and consequently of the means which are necessary for obtaining it. Hope formally consists in that elevation of soul and firm expectation. But we do not hope except for what we have known as desirable and possible of attainment, although difficult. Wherefore hope is said to be of a future, arduous, possible good (St. Thomas, Q. *De Spe*, art. 1). The infinite perfection of God, by which He Himself supremely befits the creature, declares that He is supremely concupiscible. At the same time, however, He is in Himself altogether inaccessible to us, so that hope of possessing God must rest in no way upon our own powers or actions, but wholly upon divine assistance. Therefore the formal object of hope, or the motive on which it rests, is the Omnipotence of God, His Supreme relative Goodness, and His fidelity in promises. But our merits, if we are adults, are a condition appended to the attainment of the thing hoped for. Moreover, he hopes more perfectly who, in the state of grace, actually has merits than he who only proposes to acquire future ones (St. Thomas, 1, 2, q. 65, art. 4). Eternal beatitude, or God beatifying, is the primary material object of hope; the means or necessary aids are its secondary material object. That beatitude directly terminates hope as it is objective, or God to be possessed in Himself; yet at the same time, in oblique, the subjective happiness of His possession is intended.

But God is not desired by the one hoping as a means of enjoying another good, but as the very good which the one hoping desires to enjoy; and love of God as relatively good by no means excludes the love by which we love God for His own sake; just as the divine amiability as to us by no means removes, but presupposes, the infinite amiability of God in Himself and for His own sake.

Hope presupposes faith: what we hope and why we hope must suitably be apprehended; theologically I cannot expect what theologically I do not know. It is begun in a theological affection or love of its primary object, or of God, insofar as He is discerned by the light of faith and is believed to be our supreme good, infinitely to be sought. Hope formally gives us a true ambition, proportioned to the thing, for this good. Insofar as we raise ourselves to attaining so arduous a good, hope is an outstanding magnanimity of the Christian; insofar as we dare this, relying on the divine promise and trusting in God, hope is glorious to God; insofar as by free will we cooperate with the inviting grace of God, hope is of the greatest merit for us.

Through hope we participate in the immutable will by which God loves and wills His beatitude; indeed it confers upon us a certain anticipated possession of so great a beatitude; in which sense Paul called us "rejoicing in hope" (Rom. 12, 12). On the part of God, the attainment of the hoped-for good is certain: hence the firmness of hope; on our part, it can fail per accidens: hence the fear and trembling with which, from the Apostle (Phil. 2, 12), our salvation is to be worked out by us.

Confidence itself is "hope strengthened from some firm opinion"; it is a certain mode and perfection of hope (2, 2, q. 129, art. 6, ad 3).

The various things which are controverted concerning the material and formal object of hope we leave to dogmatic lectures.

II. Necessity of Hope. — Without hope there can be no charity, since it is repugnant to our nature that we love what in no way is our good. Therefore both the habit of hope is an essential part of justification for every man, and the act of hope has, in an adult, necessity both of means and of precept.

This precept obliges per se, or from the virtue of hope: 1. At the beginning of moral life, as a part of voluntary conversion to God, our end (thus St. Thomas, 1, 2, q. 89, art. 6; but cf. Ballerini-Palmieri, II, 122); - 2. For recovering the habit of hope which has been lost through an act of despair or one repugnant to hope; - 3. For overcoming a temptation of despair, if it is a necessary means; - 4. As many wish, around the end of life, when a conscious man, by an almost necessary inclination, will aspire to heaven, unless he contemns heaven; - 5. Sometimes in life. How often? This cannot be defined. But in fulfilling the duties of Christian life, acts sufficient in number will not be lacking. Cf. the things said concerning faith.

The same precept of hope obliges by accident: 1. As often as acts are imposed which contain a virtual use of hope: prayer, penance, charity; - 2. When a tempted man is in proximate danger of consent, unless he raises his soul by hope: if, however, he is conscious of this connection.

— Detractors of the Catholic faith preach a gratuitous love of virtue, and deny the true moral honesty of an action which is commanded by fear of hell or hope of eternal reward. In this attack of theirs, first, they are shamefully deceived concerning the true nature of hope and fear. They entirely pass over the theological essence of hope; they hold as vulgar cupidity the sublime participation of anticipated divine beatitude; the desired good or reward they thrust down to a certain supreme but vulgar delight, while there is question of the very intrinsic and supernatural perfection of man; they suppose the affection to be human, while it is a communication of that most holy love by which God loves His own beatitude. Then they are ignorant, or pretend to be ignorant, that in Catholic doctrine fear servilely servile is not made honorable, but only that fear which excludes affection for sin; nor is hope praised, or indeed able to subsist, with the exclusion of the superior motive which is love. But by their preaching of gratuitous virtue, they sin against human nature, which by an invincible tendency can love nothing unless it is in some way its own good; logically they would have to condemn all social institutions which, in order to restrain the wicked and stimulate the good, promise penalties for delicts and a just reward for good deeds. Wherefore their preaching is shown to be perfectly sterile.

How much more happily that outstanding exhorter of most perfect charity, St. Paul, keeps the eyes of the Christian athlete intent on the heavenly prize, while he inculcates to him faith which works through charity. Hence R. P. Bover, S.I. (*La ascetica de S. Pablo*, p. 90), commends this formula of action as Pauline: "Faith works through charity on account of hope."

Summary

— I. Hope is a theological virtue by which, relying on the goodness, omnipotence, and fidelity of God in His promises, we are raised in soul to a certain expectation of beatitude, and consequently of the means which are required for obtaining it. In that elevation of soul and firm expectation, hope formally consists. The relative assisting Goodness of God, His Omnipotence and Fidelity in promises, constitute its formal object. God beatifying, connoting the beatific vision, is its primary material object, while the secondary consists in the necessary means or aids. Hope presupposes faith and is

begun in the theological affection or love of God (imperfect charity). It is at the same time glorious to God, magnanimous and meritorious for us. On the part of God, the attainment of the hoped-for good is certain; on our part, per accidens, it can fail.

Confidence is a certain mode and perfection of hope, insofar as it is hope strengthened from some firm opinion.

II. Since without hope there can be no charity, its habit is an essential part of justification; and its act has, in the adult, necessity of means and of precept.

III. The precept obliges per se and by accident, almost as was said concerning faith, except that the obligation of an act of hope immediately from the use of reason is controverted. Cf. Ballerini-Palmieri, II, 122.

IV. Since we wish to enjoy God Himself, and the love of God as good to us by no means excludes, but indeed prepares, love of God for His own sake, hope can fall under no reproach. The preachers of gratuitous love of virtue are deceived by ignorance, and sin against human nature.

Title II: Sins Against Hope

I. — Hope is violated by despair, by which the will deliberately ceases from the pursuit of beatitude, which it judges to be morally inaccessible to itself or to be neglected: whether it obstinately at least doubts concerning the divine assistance necessary for overcoming difficulties, or concerning divine mercy because of its sins, or whether it esteems too highly the labor to be endured and fastidiously contemns the reward.

Despair is directly opposed to confidence in God, is injurious to Him, and consequently is mortal from its whole genus. Yet often, for example in grave sadness, imperfection of the act will excuse from grave sin.

II. — Not by defect, as despair does, but by evil excess, man sins against hope by presumption.

Presumption, in general, says a certain confidence concerning a matter before it happens or is known to have happened. In a "pejorative" and more recent sense, it is confidence not founded. But insofar as by vain confidence we in some way sustain or inform our moral life, we act inordinately; we sin by imprudence and rashness of various gravity and species according to the quantity and specific quality of the evil to which we are exposed.

Hence presumption against theological hope is to be distinguished from presumption besides that hope: which presumption can also be called vulgar.

By presumption against hope, man strives to obtain supernatural beatitude by his own powers; or he attributes to the assistance of God what does not befit it, when he dares to hope for pardon without penitence, or glory with final perseverance in sin.

The first genus of presumption removes the formal object of hope; the other changes its material object, as if one wished to believe a non-revealed object. Both these genera are mortal from their whole genus. And St. Thomas judges it graver to wish to exercise hope in false objects than to trust in one's own powers rather than in divine assistance.

Beautifully St. Thomas says that despair is graver than presumption, because it befits God according to Himself to give heaven, but to punish only according to our sins (2, 2, q. 21, art. 2, c.).

Sins of presumption properly so called are scarcely ever committed.

— Practically, by the name of presumptions, men accuse evil confidences by which they expect too much from themselves, even with divine graces, and thus approach dangers rashly, or, abusing divine long-suffering, defer penitence, or add sin to sin, because three sins are accused as easily as one, or because God is no less ready to pardon several sins than one sin, etc.

In acts of this kind they in no way think of relying on the divine promise or of exercising theological hope. Wherefore these presumptions are not against hope but besides hope: these men sin by rashness against charity toward themselves, and by ingratitude toward God. According to the nature and gravity of the danger to which they commit themselves, they will sin gravely or venially. The proposition: God pardons three sins just as easily as one sin, certainly of itself is blasphemous, as if God does not care about the number of sins: but little attention is paid to that blasphemy. Observe

also that the divine goodness or mercy is not assumed as a motive of sinning, but rather does not then prohibit from sin (Cf. Lehmkuhl, I, n. 436).

A certain genus of presumption is committed, to be estimated from the gravity of the danger or evil, when someone, esteeming his own powers too highly, casts himself into danger of sinning; or when certain things are expected apart from divine ordination: for example, health without the use of medicine. According to the gravity of the danger or evil, the sin will be grave or light (Cf. the things just said).

III. — Despair is contained in the highest degree in a certain hatred of God, which is called hatred of abomination, by which God is displeasing to us as hostile because of the vengeance of sins, so that man no longer places his happiness in God.

But that sin, rather than being formally opposed to hope itself, is opposed to the love of God which some call the love of hope. That love itself is presupposed to the very elevation of soul which is formal hope, and is better referred to charity (certainly imperfect charity).

— It is mortal to hope for or to love more, with love of concupiscence, these earthly things than heavenly things: suppose someone so disposed that he desires to live perpetually in this life, and would leave heaven to God if He would leave earth to him. Yet for the most part these words do not contain that mortal repudiation of heavenly good before earthly good, but express a mere velleity, which signifies a great affection for the present life, or fear of death because of uncertain salvation, or even a defect of living faith and a certain natural hesitation concerning the future life.

— By every sin by which faith itself perishes, hope is concomitantly taken away. Besides, it is lost by despair: whether you contemn the divine good as not desirable, or you no longer trust that that good is accessible to you; and by the two reasons of presumption properly so called (cf. n. 62): these are directly opposed to theological hope.

— You ask in what way he sins who applies his hope to objects which God can in no way give: moral evil, indifferent things as such. If he wishes to appeal to the very motive of theological hope for obtaining these things, by attributing to the divine promise what in no way befits it, he will have sinned against hope itself, as we said, n. 62, by a sin which can in no way be composed with the habit of hope. Cf. 2, 2, q. 21, art. 1, ad 3. But if he merely prayed to God for that thing, appealing to no divine promise, then an object morally evil is to be distinguished from an indifferent one: he will have sinned gravely, not against hope but against religion, who prays God to assist him in moral evil. That sin is to be ascribed to the genus of superstition. Add that it is objectively blasphemous that you suppose God as favoring moral evil. But those do not sin who merely pray that after the evil has been perpetrated they may escape physically unharmed; nor he who in the very act of sin implores the mercy of God. Although it is also inordinate to ask for indifferent things, as such, since God wills and gives all things insofar as they bear an order to our salvation, nevertheless we do not judge this to be grave.

Summary

— I. Sin is committed against hope: 1. by despair, by which someone ceases from pursuing beatitude, whether he at least doubts concerning divine assistance, for example, after sins have been committed, or whether he fastidiously rejects the heavenly reward itself: this is despair less properly so called; -

2. by presumption, by which someone would attempt to obtain eternal life either by his own powers, or would attribute to the assistance of God what does not befit it: pardon without penitence, glory with final perseverance in sin. By both despair and presumption, the formal object of hope is removed and hope itself is lost. But this presumption is scarcely committed; despair not rarely is excused from grave sin by the very imperfection of the act.

But by the name of presumptions there usually come several evil confidences which, according to the various degree, conscience, and created danger, can be a grave or light sin.

It would be grave against hope itself deliberately to rely on the motives of hope for asking from God things which God cannot give because of His infinite holiness: moral evil, indifferent things as such; and it is also grave against religion simply to ask God for assistance toward moral evil (it would be another thing toward escaping unharmed).

II. They are accustomed to oppose to hope a certain hatred of God, conceived from the occasion of the justice by which God punishes sins. Yet this sin rather is opposed to imperfect charity which is presupposed to hope itself.

III. Grave would be the repudiation of heavenly good before earthly good; but words by which someone seems to wish that he always spend life in this life rather contain a venial inordination of too great affection for the present life, or too great fear of death, or not sufficiently living faith.

Treatise III: On Charity

Division of the treatise. - This principal treatise on theological charity admits this natural division: that, after a general view of the virtue, we should treat successively of charity as it is love of God, and of charity as it is love of ourselves and of neighbor.

Title I: The Notion, Sublimity, Scope, and Easy Exercise of Charity

Utility. - This is of the greatest use to the moral theologian: that, once the notion of the virtue has been perceived, he may be able to persuade the faithful how noble and at the same time how easy the act of charity is.

I. Notion, Sublimity, Scope. — To the new and ineffable communion by which, from our supernatural vocation, we shall be made one with God and neighbor in the immediate beatific possession of God, there corresponds a new virtue, at once operative and unitive, by which we love God and, in God, every neighbor together with ourselves, as, with attention given to the present order, it is fitting to love; just as by hope we intend and expect that beatific possession, as it is fitting to expect so great a good; just as by faith we believe God and believe in God revealing, as is fitting.

Therefore the theological virtue of charity is defined: a supernatural, infused habit, by which we are able to love God, as infinitely good in Himself, with the supreme love of friendship, and ourselves and our neighbor on account of God. In that definition, the formal object of charity is shown to be the infinite goodness of God in itself, that amiability which God lays open to one contemplating His goodness; a twofold material object is assigned: primary, which is God Himself, infinitely good in Himself; secondary, which is ourselves, together with our neighbor. From God there is made to us and to our neighbor a certain extension or diffusion of love: we love ourselves and our neighbor insofar as we are called to participate in the divine nature. That love is of friendship, insofar as it is of mutual benevolence founded in the communication of divine and eternal beatitude. For this communication, although it is not the motive of charity, is nevertheless a necessary condition so that we may be able to love God with the supreme love of benevolence, and so that that love may be one of friendship. It is at the same time supreme, not only insofar as, in our estimation, God by His goodness infinitely surpasses every created good, but also insofar as, founded in the supernatural knowledge of faith and in the supernatural ardor of hope, that love is given by a virtue which is in some way proportioned to the object: we begin to love God as if we saw Him.

Charity, like every true love, loves, unites, operates. - It loves, but with an affection which imitates the infinite love by which God loves His Goodness and, in this Goodness, whatever outside Himself is lovable: and thus no purer and more sublime affection can be conceived. - It unites us with God and neighbor: through that holy friendship, we arrive at a certain communion of cause and unity with God, which divinizes us; through the same friendship, men are joined among themselves by the most perfect bond: it comes about that the good of individuals becomes the good of all, and thus from every good a universal joy is prepared; it comes about that the evil of individuals becomes the evil of all, and thus a beginning is given to universal beneficence. - It operates, by joining our will with the divine will: and thus it leads us to the summit of perfection; it operates, by stimulating every good action: and thus it becomes most fruitful.

We can offer nothing more glorious to God than that we love Him with perfect love; nothing more meritorious for ourselves than that by the free effort of the will we embrace the divine good in affection and effect; nothing more useful to our neighbor than that we comprehend him with the same love with which we love ourselves and God.

Without charity we merit absolutely nothing: and thus charity is the root of every merit; through charity, by which we are joined to God Himself, our works arrive at God: and thus, insofar as they are meritorious, our works are perfected by charity, which becomes the form of all virtues.

No virtue in us, more than charity, is formally divine. For God, who beholds Himself and is present to Himself, formally neither believes nor hopes. Both faith and hope connote a defect either of vision or of the presence of God; but in formal charity, we come together with God.

Hence charity is an eternal virtue: "Charity never falleth away" (1 Cor. 13, 8).

No exercise is more commanded than that of charity, to which all precepts are directed as to an end. And at the same time none is more free, since charity by spontaneous motion fulfills all the precepts, so that the law is said not to be placed for it (Cf. 1 Tim. 1, 9).

Nothing is more sublime in affection, nothing more fruitful in effect.

The queen of the virtues, charity uses all the others as subordinate instruments.

And insofar as it reduces the whole world with God to the magnificent unity of one beloved object, charity is the joy, splendor, and perfection of the whole created world.

[1] The relative goodness of God is the condition of the love of benevolence which even in the natural order we would have to foster toward God as servants; goodness advanced as far as communion of blessed life gives place to the filial love of friendship.

Name. — By force of the word itself, charity (Greek *agape*) is named more nobly than love. For it designates an affection which a) is proper to man here on earth, whereas love (Greek *eros*) is predicated even of brute animals; b) proceeds more from reason and from a just estimation of the lovable person than from the impulse of passion, whence love arises.

II. Facility. — Yet let us not imagine that sublime exercise of charity to be difficult for ourselves. Entirely impassable for us without the help of God, its use becomes spontaneous for those who have received the spirit of adoption, that is, for those who, actually turned away from grave sin, possess the infused habit of charity. For what is sufficient so that, made sons of God, we may love Him with actual charity? It is sufficient that we not only desire God with concupiscence, but truly love Him, "as a man loves a friend" (2, 2, q. 17, art. 8, c.). But are we not drawn to this love when, immune from the servitude of sin, we consider either the divine benefits, both those which we have received and those which we expect, or the Passion of Christ, to which we refer them as received? Hope itself, says St. Thomas in the same place, introduces charity [1]. And what grace orders us to do, grace itself helps us so that we can do it.

It is also proper to one who loves that he should seek union with his friend. Wherefore the desire of possessing God, unless it is explicitly thrust down to one's own consequent happiness, is practically an act of charity. Cf. St. Alphonsus, l. 2, n. 24.

Indeed God, in every order, is so greatly the good of every creature, that according to St. Thomas (1, q. 60, art. 5; 1, 2, q. 109, art. 3; 2, 2, q. 26, art. 3), every creature naturally loves God more than itself. Besides, it cannot love itself more and better than by loving God, on whose goodness every created goodness essentially depends. But in the natural order, love between God and man would not have been a love of friendship, which demands some equality either of nature or of grace, and therefore communication in the same life.

N. B. Several things which are controverted concerning charity we permit to be defined by dogmatic theology. Now we must treat distinctly of each material object of charity: God and neighbor.

[1] For gratitude, although it is formally commanded by benefits received and, under this respect, pertains to love of concupiscence, nevertheless almost of its own accord impels a grateful man, so that in the benefits themselves he loves the very goodness of the giver, which is proper to charity (Cf. Billot, *De caritate. De praeceptis caritatis*, p. 427).

Summary

— I. Theological charity is a supernatural, infused habit by which we are made capable of loving God, as infinitely good in Himself, connaturally with the supreme love of friendship, and ourselves and our neighbor on account of God. - The formal object of charity is the infinite goodness of God and therefore amiability in itself; its primary material object is God Himself; its secondary object: ourselves together with our neighbor; we love these as actual or potential participants in the divine nature; the condition is the communication of divine and perpetual beatitude; its nature is friendship, founded in this communication, or communion in the same life; its degree is supreme.

II. By the love of charity, imitating the love by which God loves His Goodness and, in This, whatever is lovable, we are made one with God and neighbor; and, the will being joined with the divine will, we work every good. Wherefore nothing is more glorious to God, nothing more meritorious for us, nothing more useful to neighbor than the exercise of charity: without which we merit nothing, and which becomes the form of all virtues. No exercise is more commanded. No virtue is more formally divine and eternal; it is the joy, splendor, and perfection of the created world. - More noble than the name of love is the very name of charity.

III. Nor, for those who are immune from the servitude of sin and have been given the infused habit, does its exercise become difficult. It is sufficient to love God as a man loves a friend. This affection is prepared by the very benefits obtained and hoped for: the goodness of the benefactor is loved in the gifts themselves. Cf. Billot, *De caritate, De praeceptis caritatis*, p. 427.

Title II: On Charity as It Is Love of God

Utility. - Two things especially must be attended to by us in this title: in what way the precept of loving God is satisfied, and by what reason servile fear and the desire of beatitude are composed with filial love.

I. The Precept. — The Lord in the Gospel, St. Mark 12, 30, promulgated as the greatest and first commandment the precept of loving God, and that in the words of Deuteronomy 6, 5: "Thou shalt love the Lord thy God from thy whole heart, and from thy whole soul, and from thy whole mind, and from thy whole strength." Cf. St. Matthew 22, 37. (Among the Hebrews, the heart signifies intellect and affection.) Those words proclaim to us affective and effective love, the love of the whole man, full in this way, that nothing which disagrees with the love of God is admitted. Cf. the cited writers in Knabenbauer on the alleged places. Therefore in these places a love intensively supreme is not commanded. Such a love is supreme from the subjective force of affection, especially insofar as sensible love concurs with the love of the will: which intensity is most becoming, so far as it is in our power. But only a love of God appreciatively supreme is commanded, or one from the estimation of judgment, so that we place no creature before God and would rather lose all things than God.

Execution of the Precept. — As was said concerning faith, charity, besides its formal act, finds in acts which suppose that affection a quasi-virtual exercise by which the precept of charity can be fulfilled.

Moreover the precept of charity urges per se: at the beginning of moral life, so that by converting ourselves to God we may direct ourselves to Him, our end (cf. nevertheless the things said, n. 58); - if a temptation of hatred of God cannot otherwise be overcome; - as many wish, at the end of life; - frequently in life. How often? Some say once in a year, others once in a month, others on each Sunday and feast. The things said concerning the act of faith and hope return. What son asks how often he must actually demonstrate his affection toward his parents? Neither he himself nor another can define the number. But a good son is content to foster an affection which will most gladly use many occasions of acts; the less good one, however, bears no solicitude about that frequency.

From another virtue, or per accidens, an act of charity will have to be made if reconciliation with God is to be procured, and there is no supply of the sacrament with which attrition would suffice; - if a temptation against a different virtue cannot otherwise be overcome.

He exercises an act of charity implicitly or quasi-virtually who recites the Lord's prayer from the soul, who rejoices over the divine perfections, who wishes that no one offend God, who grieves over offenses inflicted on God by others, who desires that all worship God, who avoids sins because they displease Him, etc. Gury-Ballerini-Palmieri, I, n. 219.

In this matter, the following propositions were condemned by Innocent XI: 5. "Whether he sins mortally who would elicit an act of love of God only once in life, we do not dare to condemn." - 6. "It is probable that the precept of charity toward God does not per se oblige even in individual rigorous five-year periods." - 7. "It obliges only when we are bound to be justified, and we do not have another way by which we can be justified" (2 March 1679 - Denz., n. 1155, 1156, 1157). - Earlier, Alexander VII, 21 September 1665 (Denz., n. 1101), had proscribed this: "Man at no time of his life is bound to

elicit an act of faith, hope, and charity from the force of the divine precepts pertaining to those virtues." (The propositions were condemned at least as scandalous; the former also as pernicious in practice.)

Therefore the matter practically returns to this: that we exhort the faithful to eliciting frequent acts of charity, to acting in the spirit of love and from the motive of love, and that we gently inculcate acts of charity upon the gravely sick.

Necessity of Charity. — The habit of charity is in reality necessary by necessity of means. The same cannot strictly be said of the act of perfect charity, since the sacrament of penance restores the habit of charity, and, although it demands a quasi-virtual use of faith and hope, it can be received fruitfully without an act of perfect charity.

The Sin of Hatred of God. — It is mortal and the gravest of all sins to pursue God Omnipotent and Most High with formal hatred of enmity or malevolence, as if someone should wish that God not exist, or be deprived of some attribute, for example, knowledge, power, etc.

Fear of Hell and Love of Beatitude. — Certainly the present intention of sinning if hell did not exist would be sinful (servilely servile fear); or of not loving God unless there were the reward of beatitude; but he does not sin who, while he elicits an act of charity, has beatitude itself as the end of the one operating. For God is not therefore loved appreciatively less. Does not every right act, such as hope is, already per se direct itself to God as the supreme end? Does not St. Thomas (on this place) understand concerning theological hope itself the saying from St. Paul: Charity... "hopeth all things" (1 Cor. 13, 7)? Does not St. Paul prove these things more expressly: "Hearing your faith in Christ Jesus, and the love which you have toward all the saints, for the hope which is laid up for you in heaven" (Col. 1, 4.5)?

On the contrary, among the propositions condemned and prohibited by Alexander VIII, 7 December 1690, as respectively rash, scandalous, ill-sounding, injurious, proximate to heresy, savoring of heresy, erroneous, schismatic and heretical, there was reprobated the proposition which denied that fear of gehenna is supernatural (prop. 14, Denz. 1305); and by Innocent XII, 12 March 1699, among propositions condemned and reprobated... as rash, scandalous, offensive to pious ears, pernicious in practice, and also respectively erroneous, propositions which called it vicious to act with regard to beatitude (Denz. 1327, 1331, 1332).

Summary

— I. There is a special precept of loving God with full affective and (in disposition) effective love, and therefore appreciatively, not intensively, supreme. The Lord Himself, in the Gospel of St. Mark 12, 30, promulgated it as the first and greatest commandment.

That precept urges per se, according to St. Thomas, at the beginning of moral life, and, as many wish, at the end of life; then, if a temptation of hatred of God cannot otherwise be overcome; then frequently in life: a frequency which cannot be defined theoretically, but which in practice is procured abundantly by a pious man. Per accidens it urges when, the supply of the sacrament of penance being lacking, reconciliation with God is to be procured, or if a temptation against another virtue cannot be overcome in another way.

II. Charity, moreover, besides its formal acts, is exercised quasi-virtually in acts which suppose the affection of charity.

III. The habit of charity is in reality necessary by necessity of means.

IV. The gravest of all sins is the hatred of malevolence by which one would pursue God. Not the very prevision of future sin, but the present intention of sinning if hell did not exist, would be sinful; nor does he sin who, while he elicits an act of charity, has beatitude itself as the end of the one operating.

Title III: On Charity as It Is Love of Ourselves and of Neighbor

Chapter I: The Varied Character, Universality, and Order of Love or Friendship

Utility. - It matters very much that we acquire for ourselves a distinct account of the order of charity, and that we understand well the connatural concord between love of ourselves and love of neighbor.

I. Varied Character. — 1. Since every friendship is founded in some communion of life, as many as are the communions, so many will be the genera of friendship. The ineffable communication by which, through supernatural sanctifying grace, we communicate in the divine life, founds a friendship at once most sublime, since it is of charity whose primary object is the divine Goodness itself in itself, and most universal, since it joins even the pure spirits with us and with our neighbor.

Communication in nature begets the universal society and friendship of men whom God has not punished with infernal degradation.

Besides, unequal conjunctions among rational creatures take their beginning from unequal communications in other goods: as in the family and in the state.

Conjunctions which rest upon a communion of lower life can be observed both from charity and from benevolence of a less high honesty.

For since they have been foreseen and willed by the most wise God, charity itself commands their observance. They integrate the order of charity, rather than being repugnant to the law of charity.

And by honestly cultivating the various friendships of the lower order, we exercise virtues which indeed are inferior to charity, but which nevertheless, in a just man, will not lack their own proper merit. Therefore we can observe legitimate conjunctions in a twofold way: insofar as, in the very exercise of charity, we attend to them; and insofar as, from an inferior motive, we show ourselves faithful friends.

2. No true love consists in exterior action alone: we can honestly offer a good and useful action even to brute animals, indeed to plants.

Wherefore, according to varied exercise, we can distinguish love of the heart, or interior love; love of the mouth, or that which is in signification; and love of work, which is in beneficence. This distinction is to be attended to in the very order of charity.

II. Universality of Charity. — It is commanded that neighbor be loved even with affection.

A neighbor is only and every rational creature, with the damned excepted. For these, like irrational creatures, are excluded from the beatitude in whose communication charity rests. - He is to be loved even with affection. For there is no true love which is merely exterior. Besides, from internal benevolence proceeds the beneficent action which we exercise toward ourselves. But from the mouth of Christ we have received the second precept, similar to the first, in these words: "Thou shalt love thy neighbor as thyself." Therefore every neighbor is to be cherished with a general affection of benevolence.

To this point pertain both propositions 10 and 11 condemned by Innocent XI, 2 March 1679, among those condemned and prohibited at least as scandalous and pernicious in practice: "We are not bound to love neighbor by an internal and formal act." - "We can satisfy the precept of loving neighbor by external acts alone" (Denz. 1160, 1161).

2. That office does not demand that we elicit formal acts of universal love. It is enough that, on a given occasion, the good or evil of any neighbor which we know should excite in us some joy of approbation or some compassion, which demonstrate some general disposition of benevolence or sympathy. It is also manifested and exercised by general prayers, for example, *Our Father*, *Hail Mary*, from which we exclude no one.

III. Order of Charity. — 1. Things to be noted beforehand. Between right love of ourselves and of neighbor there is no opposition per se, but, on the contrary, a wonderful concord. We cannot love our neighbor better than by right love of ourselves, by which we become more perfect and therefore more powerful for helping our neighbor. Indeed, on account of the community of goods which follows friendship, our good is already the good of our neighbor, at least when there is question of those true goods which are not to be divided in such a way that the more one receives, the less can fall to another. And in turn, by loving neighbor we love ourselves, since right love of neighbor is meritorious. Therefore, while we procure spiritual goods for our neighbor, we in no way per se harm our own spiritual good, and we can expect more helps from a better neighbor. But if, for the utility of neighbor, we neglect our temporal goods, indeed life, that detriment of the inferior order is abundantly redeemed by compensation of the superior good (2, 2, q. 26, art. 4). Hence the friend who gives his life for his friend chooses for himself the greater good, and therefore loves himself more than his friend.

Wherefore the true question concerning practical preference, by which we prefer one to another, arises rather among various neighbors than between ourselves and neighbors. For when there is question of others, those whom our beneficence does not help do not obtain of themselves the merit and compensation of the superior order, which he obtains who "seeketh not her own" (1 Cor. 13, 5).

Therefore, without any appearance of "egoism," we can establish, with St. Thomas, that right order demands that from charity we love ourselves more than neighbor, who nevertheless is to be loved equally, because charity as referred to us is founded in our participation of divine beatitude, while others are loved as associates in that participation (2, 2, q. 25, art. 12; q. 26, art. 1 and 4). Besides, according to Sacred Scripture and Christ Himself: "Thou shalt love thy neighbor as thyself," love of ourselves is the rule for love of neighbor; but the rule is prior to the thing ruled.

Besides the communication in eternal beatitude, upon which theological charity is founded, there are among men unequal communications in other goods, which beget various conjunctions: for example, in the family, in the state. These conjunctions, since they have been foreseen and willed by the most wise God, are not repugnant to the law of charity, but rather integrate the order of charity, so that according to charity itself they are to be observed.

2. A twofold principle of order. After St. Thomas, 2, 2, q. 26, art. 6, we acknowledge a twofold principle of order: one on the part of the object, which is God; the other on the part of the subject, which is the very one who loves; and according to unequal nearness to one or the

other principle the very character of love from charity varies. Thus, according to the Holy Doctor, the intensity of affection is taken from the one loving; wherefore with a more intense affection we will more strongly the good which we can wish for and procure for those nearer to us (l. c., art. 7). But always the one loving himself is the principle and, as it were, the rule of loving one near to him.

— 3. The order of charity. a) As to interior acts. If there is question of simple complacency and approbation, we ought to will to each neighbor the good which he has. "It pertains to charity that it wish the justice of God to be preserved, according to which the better participate more perfectly in beatitude" (2, 2, q. 26, art. 7). Wherefore in this love, which is mixed with estimation and brings with it honor, worship, and reverence, the better, the holier, are to be placed before the less holy, although the latter are more joined with us. For a similar reason, even in the order of lower communion, parents are to be loved more than children or wife, benefactors more than those to whom we have done good [1] (2, 2, q. 26, art. 9-12).

But if there is question of benevolence and desire, by which we wish for another a good not yet possessed, just as the solicitude of providing is increased by subjective nearness, so it will be consonant with order that we desire more the good of those who are bound to us by a closer bond. Wherefore, in this order, the wife who is one flesh with the husband, children who are something of the parents, are preferred to the parents themselves.

b) As to signification. Charity ought also to be manifested by exterior signs. These vary according to the quality of the person and the very conjunction. Observances are owed to superiors, affability to equals, benignity to inferiors. There exist common signs, which are to be denied to no one per se, and special signs, among those who are nearer.

c) As to beneficent action. Finally, true charity ought to be beneficent. In estimating the laudable acts and offices of charity, the order of charity must here be composed with the various necessities.

[1] Nevertheless by natural inclination we love more those to whom we have done good, because something of our own has been placed in them, and thus we love ourselves in them. Hence he testifies humble friendship who accepts a benefit: he consents that he belong in some way to another.

— Moreover necessity is distinguished by a twofold genus: spiritual, which is considered with respect to eternal life (not simply with respect to the life of grace); temporal, which is estimated with respect to temporal life.

Extreme spiritual necessity is that of him who without the help of another undergoes a certain and proximate danger of eternal damnation, so that this ruin is morally certain, for example, a child about to die without baptism. An uninstructed unbeliever is also in a similar necessity, or an uninstructed faithful person who has lived very badly; but not every uninstructed faithful person: for he can help himself by an act of contrition.

Grave spiritual necessity is that which is overcome with difficulty: as when someone is in a sufficiently proximate danger of losing the faith or good morals. - Common spiritual necessity presses sinners or those who are about to sin unless they are taught or corrected.

Extreme temporal necessity is that from which death or an equivalent evil in moral estimation threatens one in need: perpetual servitude, infamy, violation, ruin of health. An evil is said to

threaten insofar as it will follow certainly and shortly, for example, within a few months. Cf. Busenbaum, *Dubium de eleemosyna*; St. Alphonsus, l. 2, 31; Lugo, *De Iustitia*, d. 16, n. 135; Genicot-Salsmans, I, 222. To this necessity is almost equated that which is called quasi-extreme, when the danger of an extreme evil is less threatening, yet probable, or when an evil threatens which is almost equivalent to death: perpetual weakness, grave positive infamy. - Grave necessity is constituted by a grave evil threatening, by which, however, those goods are not taken away which nature willed per se to belong to all: for example, loss of riches, of office, being cast down from one's state, captivity that is not most grave. - Common necessity is defined by that remote danger of life in which those who have no goods are habitually placed. It is the common lot of beggars; wherefore it is said to be theirs.

In the material description of necessities not all strictly agree. Lugo, d. 16, n. 154, proposes a sufficiently useful rule of formal distinction, so that you call necessity extreme, quasi-extreme, grave, according as privation with moral certitude affects goods which nature willed simply to be present to all, or per se to be available to all, or, on the contrary, granted to some and denied to others. Another formal account is taken from the relation which the good has with the temporal good which is the greatest and fundamental, that is, with life.

The Order of Charity Composed with Various Necessities. — 1. Between ourselves and neighbors, as to beneficent action, these general principles or norms are shown by the very order of charity.

1. It is lawful for us to postpone necessary spiritual good to no utility of neighbor: wherefore, with certain prevision of mortal sin, no works can be offered to neighbor. - Spiritual good which is not necessary, but certain, we must postpone to office, but to no utility of neighbor whose care has not been imposed upon us. Wherefore neither can a son desert his needy mother, nor can a religious violate obedience, in order to preach the Gospel to barbarians. But it is not to be advised that we redeem the utility of neighbor by the loss of spiritual good. - It is lawful to prefer uncertain spiritual good to the utility of neighbor. What is to be counseled must be gathered from the circumstances. Wherefore, for a probably more perfect life, it is lawful to renounce a very good action among the people, although it is not always more expedient.

But see that you observe that that opposition between our spiritual good and the utility of neighbor is only accidental. Thus, in the classic example of the son who is impeded by the office of piety toward poor parents from entering religion, or from going to foreign missions, the son per se can become no less holy among his parents than in the midst of barbarians. But human frailty brings it about that we yield to the difficulty of the circumstances.

2. We must postpone our bodily good to the extreme spiritual necessity of an individual neighbor; we can per se, but are not bound to, postpone it to the bodily good of neighbor.
3. As to external goods, we can per se, but are not bound to, prefer an individual neighbor to ourselves; and therefore, by the same reason by which it is lawful to neglect physical care of the body on account of another temporal utility of our own, by the same reason it will be right to neglect the body on account of the utility of neighbor.

4. Our spiritual good excepted, when there is question of other goods, common utility [1] is to be placed before one's own.

These principles are easily shown if you consider: a) that it is fitting that we love ourselves more than neighbor with the love of charity; b) that spiritual detriment is compensated for us by no good, while bodily and temporal detriment admits compensation by a better good; c) that through the body and exterior goods, but not through spiritual goods, we are members or parts of a community; but parts exist for the whole, and therefore their good must yield to the good of the community.

[1] By the name of utility is meant what in Italian or French we would call *interesse*. Wherefore this word comprises not only useful goods but even especially necessary goods.

— 2. Among neighbors themselves, the same order of charity orders that we first succor private persons more joined to us, and indeed by attending first to those to whom we must bring help per se. Wherefore neighbors come in this order: wife or husband, children, parents, collateral blood-relatives and relatives by affinity, household members and familiars. One exception to that order is admitted: in extreme necessity, parents, because they have given life, are said to be preferred even to wife and children. Cf. Laymann, L. 2, t. 3, c. 3, n. 5.6.

Necessary public good is to be placed before private good; non-necessary public good cannot be preferred to necessary (or obligatory) private good; it can be preferred to non-necessary private good, and this per se is laudable.

Summary

— 1. Various communications in goods beget various conjunctions which can be observed from the supreme friendship of charity; and they also give place to various honest friendships, but of inferior dignity. And, according to varied exercise, interior charity is distinguished, its exterior signification, and its exterior operation.

2. We are ordered to love neighbor not by exterior action alone but also with affection, since we must love him as ourselves, and no true love can be merely exterior. But the interior affection calls for its connatural manifestation.

Moreover neighbor is only and every rational creature, with the damned excepted. Hence the universality commanded of love, which, besides formal acts which are contained in general prayer (*Our Father*), requires no other expressly universal acts: it is enough that, when the occasion is given, general benevolence be exercised.

3. Between right love of ourselves and of neighbor, there is no opposition per se, so that without any appearance of "egoism" we can establish the principle: from charity we must love ourselves before neighbor, who nevertheless is to be loved equally. This is gathered clearly from the words of Christ: "Thou shalt love thy neighbor as thyself," and from the foundation of charity. But the question concerning practical preference arises rather among various neighbors than between ourselves and neighbors. Moreover the principle of order is twofold: on the part of the object, which is God, and on the part of the subject, which is ourselves, as loving.

4. The order as to interior acts. By simple complacency and approbation, the better are to be preferred in our estimation to the less holy; but by benevolence of desire, those more joined to us are rightly preferred.
5. As to signification, signs are to be accommodated to the quality of the person and to the conjunction.
6. As to beneficent action, the order of charity must be composed with various necessities. There is distinguished, with respect to eternal life, spiritual necessity, and temporal necessity with respect to the present life. He is pressed by extreme spiritual necessity whose eternal ruin, without another's help, would be morally certain; by grave spiritual necessity, he who will overcome ruin with difficulty; by common spiritual necessity, he who, unless he is helped, is about to sin or not morally at once about to recover grace. Extreme temporal necessity is that of him who, without another's help, will not escape the danger of imminent death or of an equivalent evil; grave temporal necessity is constituted by an evil absolutely or relatively grave threatening; but a grave evil is one by which the quality of the present life is notably affected, although it leaves intact those goods which nature willed to be common to all. Common necessity is defined by removing that danger in which those who have no goods are commonly placed. Between extreme and grave necessity there lies quasi-extreme, when the danger of an extreme evil is less imminent, or an evil threatens which is almost compared with death.

These things having been posited, these are the norms of effective charity. a) Between ourselves and neighbors: it is lawful to prefer our spiritual good to the utility of neighbor; it is not always expedient; sometimes we must; but we must postpone it to office: nor then can there be question of our necessary good. - We must postpone our bodily good to the spiritual extreme necessity of neighbor; to bodily necessity, per se, we can, but are not bound. In external goods we can prefer an individual neighbor to ourselves but are not bound. Our spiritual good excepted, public or general necessity or utility is to be placed before our own.

For we must love ourselves before neighbor; but, contrary to spiritual detriment, bodily and temporal detriment admits the compensation of a better good. Moreover, through exterior goods and the body, but not through spiritual goods, we are parts of the community; but parts exist for the whole.

b) The norms among neighbors themselves return to this: that we first succor private persons more joined to us, and, among these, those to whom we must bring help per se. In extreme necessity, however, parents, since they have given life to us, are to be preferred to all others.

Chapter II: Corollaries on the Love of Enemies

Utility. - Because the right estimation of cases depends so much on various circumstances that the very responses of approved authors must be adapted to the circumstances and cannot be observed literally, it is greatly necessary to determine the principles themselves from which, in this matter, we can prudently admonish sinners, exhort the timorous to better things, and at the same time free them from scruples.

Who Is an Enemy, and How Manifold. — He is someone's enemy by affection who pursues him with hatred or evil aversion; or by effect who has unjustly injured him in person, reputation, honor, or goods. Christ formally taught us that enemies are to be loved: "Love your enemies" (St. Matt. 5, 43 s.; Luke 6, 27 s.); and this is demonstrated by reason itself, since they are neighbors.

But an enemy who is actually such because of present hatred or offense is to be distinguished from one who was such. This latter again can be held by a present obligation of reparation, or have no office of this kind.

I. By that precept there is prohibited:

1. Hatred of enmity. Hatred says an aversion of soul which is contrary to the good of another (Cf. 1, 2, q. 29, art. 1 and 2). There is hatred of enmity when someone wills evil to another, in himself or in his goods, insofar as it is evil to him: and this is mortal from its genus. Hatred of abomination does not affect the person himself but his malice. By that hatred we turn away from a person not as such but insofar as he is blameworthy: thus, for example, the Psalmist praises himself because he has had hatred for the wicked, - or insofar as he is harmful to us. And often it signifies that sensible horror or repugnance which we experience when an enemy is seen or heard. Such hatred, conceived concerning enemies of religion or of the state, is plainly honorable; concerning those who are hostile to us, it is for the most part mixed with venial fault, just as it is also per se venial not to overcome or subdue that sensible horror.
2. Illicit vindication. This principally intends the evil of the offender and rests in that evil. Licit vindication, on the contrary, is that which, the due circumstances being observed, pursues through punishment either the amendment of the sinner, or his restraint and the quiet of others, or the preservation of justice and the honor of God. Much more is it right to demand satisfaction for damage. Indeed, strictly speaking, we are not forbidden not to accept an offered satisfaction and to pursue a juridical action for injuries. Yet this is dangerous: then one easily yields to evil vengeance, and if a very grave penalty awaits the enemy, without proportionate inconvenience of one's own or of others, the fault will easily have been grave against charity.

Therefore the confessor should instruct the penitent concerning licit and illicit vengeance; and propose to him that he be willing to ponder the matter as if it were not his own case but that of some third person.

3. The exclusion of an enemy from common prayers, for example, from the Lord's prayer; and also, at least if he has ceased from injury and is prepared to make due reparation, from the

> common signs of love, such as are common alms, returning a greeting, response to his words, sale of exposed merchandise. Wherefore they judge that it is mortal from its genus if someone invites all relatives, with only the enemy excepted; or greets all persons met from the neighborhood or college, only the enemy excluded. It is supposed, as is clear, that the enemy has ceased from injury.

Yet he to whom the right of punishing belongs, as to a father, can deny these for a time, for correction. A denial is also excused which does not manifest hatred, but rather just sorrow because of a recent or atrocious and infamous injury. Conversation from which you fear a greater evil can also be omitted, provided that interiorly you love, and decline or repair scandal among others. Nor are we forbidden, in lighter cases and for a just cause, for example, to blunt audacity, to take a legitimate vindication which can scarcely be sought from a judge.

The sin will be light if either a trifling cause shows that there is no question of grave hatred, as if two nuns, because of a moderate quarrel, break off communication for some days; - or if the distance of the persons removes the gravity of the matter: as if a much greater person does not greet an inferior.

In a few words, the denial of common signs is grave when it proceeds from grave hatred, or gravely offends the enemy, or is a scandal to others. Cf. Noldin, II, 83. And attention is to be given to this more than to material descriptions of the signs of charity which cannot be denied under grave obligation: if the matter bears another interpretation than that of hatred, it will not be grave; but that interpretation is one thing in one place and time, another elsewhere.

For it must be avoided that we pronounce too absolutely concerning concrete cases the responses even of most approved authors, who wrote in another time or region. We shall easily concede that their oracles were true for the customs and circumstances which they contemplated; but for that reason they cannot prudently be inculcated today without a new examination. Today, for example, in many places, he who merely has omitted signs of love, but at the same time abstains from injuries and detractions, and does not refuse to fulfill strict offices of charity, if any arise from necessity, seems for the most part to have to be excused from grave guilt.

For where they distinguish a certain alienation of affection or coldness from true mutual hatred, mortal enmities are rare. And the breaking off of commerce or association, whether because of a light cause of quarrel, or because of the permanent state of an insoluble controversy, or because of an unrepaired offense, or because of a relaxed family bond, by which it comes about that not even among those rather closely joined does a custom of frequent communication always exist, is explained otherwise than by grave hatred.

— Flight by which someone avoids an enemy in order to sadden him must also be well distinguished from flight which is commanded by some remaining aversion without desire of vengeance. The former alone demonstrates hatred of enmity; the latter, if it happens without reason, will indeed be sinful, but, scandal being excluded, does not seem gravely culpable. Antipathy is one thing, hatred another; voluntary hatred is one thing, horror and anger which some experience when the offender is seen or remembered is another, whence they say that they indeed wish to forgive but cannot forget the matter, speak to the man, etc. Such persons, although they are not always to be believed when they say that they lack hatred, can be absolved if the confessor detects that those movements of anger proceed from no deliberate malevolence (Ballerini-Palmieri, II, 180).

— In confession, he who, not by a merely verbal imprecation, which often is nothing but anger, but truly from hatred has willed a grave evil to an enemy, for the most part will not have to declare the species of the evil wished, because he wished it under the confused and common notion of evil, without a special affection flowing down to this or that evil. Lugo, *Poen.*, 16,260.

II. Not to hate an enemy does not suffice for charity; but by the precept of charity we are ordered to love an enemy with interior and exterior love, yet common, not special, unless the spiritual necessity of the enemy or scandal which cannot otherwise be avoided (for example, by a declaration) demands more. But common love is to be estimated with consideration given to the quality and necessity of persons, so that what is common among brothers would be special among strangers. Therefore there must be preserved in the heart the affection which we ought to have commonly toward every neighbor (cf. n. 80) and particularly toward those joined by a greater bond of necessity, together with a soul prompt for reconciliation, if those things are offered by the other which are justly demanded from him; that affection also must be sufficiently manifested, yet prudently, unless just causes dispense; and the offices of charity must be performed which either nearness or necessity imposes.

— To one asking pardon, this is per se to be given; and, lest you betray hatred, you must manifest this even by external signs: you are not bound to grant pardon immediately after the offense has been inflicted, because that thing is violent and above human frailty. Nor, after reconciliation, is the more intimate and spontaneous familiarity which previously existed to be restored. Yet to him who exhibits the offices of peculiar friendship, it is fitting to return similar ones. St. Thomas, in 1. 2 Sent., d. 30, q. 1, art. 2, ad 5.

— The offender must be the first to attempt reconciliation; or, if the offense has been mutual, he who has offended more gravely, or who has offended first. But, unless the matter has been manifest, it is better, yet prudently, to inculcate to each that he procure reconciliation, which otherwise would never be, because of the blinded mind of both, by which one ascribes the fault to the other.

Reconciliation requires that pardon be sought, and indeed per se formally. The one offended sometimes reasonably demands this. Yet often an implicit, virtual petition supplies, which is contained in a gift, an undue service. This is admitted if the offender far surpasses the other in dignity or state; if the one offended does not care for a formal petition for pardon; if full satisfaction has been given in another way. Yet not rarely a Superior who is not ashamed to ask pardon gains for himself confidence and love, nor does he derogate from his authority.

Lest matters become worse, if the injured person does not seem likely to grant pardon, a more opportune time for seeking pardon can prudently be awaited.

Let the confessor beware lest ever, because of an occult delict which would thus be manifested, he impose a formal petition for pardon; and even where the obligation is certain, often he will prudently be silent, lest, without hope of fruit, he disturb good faith. He can merely declare that obligation, but not impose it as a penance, lest he violate the sacramental seal.

Evangelical Persuasion. — Thus far we have tried to declare what minimum must be held in this matter. But the evangelical spirit will persuade both the ministers of Christ and the faithful to a more perfect manner of acting. Grieving over the lawsuits of the Corinthians, the Apostle, from St. Matthew 5, 39; St. Luke 6, 29, wrote these things without hesitation (1 Cor. 6, 7): "Now indeed there is plainly a fault among you, that you have lawsuits among yourselves. Why do you not rather take

wrong? Why do you not rather suffer fraud?" In the Epistle to the Romans 12, 17; and to the Hebrews 12, 14, he commended these things: "If it can be, as much as is in you, having peace with all men..."; "Follow peace with all men." Indeed he wished that, by his beneficent action, the disciple of Christ should heap "coals of fire" "upon the head of" his enemy, that is, should so overcome evil in good that the enemy, suffused with shame, as if impatient of delay, could not deny love.

Instructed by these documents, the preacher of the Gospel both openly and privately will disapprove those Catholic families which, because of a contention over inheritance, so easily give a little edifying example of division and separation; he will also demonstrate the temporal detriments of discords; he will admonish how the first victim of hatred is the very one who fosters hatred: for that affection indeed nourishes pride, but takes peace and happiness from the heart.

But the faithful also will be skillful in avoiding dissensions, little solicitous about vain honor; ready and prompt in forgiving injuries, so that they may be among the peacemakers who, with the greatest edification of all, will be called sons of God.

They will also be stimulated by this consideration: that, since no exercise is seen to be more free from self-love, there is none which is shown more certainly to pertain to the theological virtue of charity. We love relatives, benefactors, and friends even on account of our own advantage or solace; we love enemies only on account of God.

Summary

— 1. Someone's enemy by affection is he who pursues him with hatred or evil aversion; by effect, he who has injured him unjustly. He can actually be such or have been such, whether an obligation of reparation remains, or only evil aversion survives.

2. We must love enemies: Christ openly taught this, and they are neighbors. Wherefore we are prohibited from every hatred of enmity, by which we will another's evil as such; from illicit vindication, and from positive exclusion of an enemy from common prayers; indeed, unless a just cause excuses, from common signs of love. The sin is grave in its genus, but admits lightness of matter; and the mere omission of the signification of love will rarely today be able to be condemned as grave. Besides, both by common affection and by effect, the positive offices of charity toward an enemy are to be fulfilled.

Hatred of abomination is to be distinguished from hatred of enmity: the former does not affect the person but his malice; a certain aversion which is observed in sense is also to be separated from hatred.

3. The species of evil which someone has truly wished for an enemy will often not have to be declared, since it rather was willed under the generic account of evil.

4. To one asking pardon, pardon is per se to be given, at least after no excessive delay; although more intimate familiarity per se, if it was spontaneous, is not to be restored.

He who alone, or more gravely, or first, has offended must be the first to attempt reconciliation through pardon sought formally or at least virtually. Often the attempt will have to be inculcated to both; yet sometimes it is prudently deferred, and is to be imposed by the confessor only cautiously.

5. The evangelical spirit will persuade a more perfect manner of acting both to Christ's ministers and to the faithful.

Chapter III: On Effective Charity

Utility and Order of Speaking. - Under this title are explained the daily offices by which, in the evangelical law, brother is ordered and counseled to help brother in necessities both spiritual and bodily and temporal. There follow questions on exhortation and fraternal correction, on edification and scandal; finally on cooperation toward a good and evil action of neighbor. Both the multitude and the importance of matters of daily use ought to make the attention of the moral theologian solicitous. But it will be of the greatest profit to him to know well what necessities press neighbor today, how much the precept of alms is to be urged concerning things which, as to use, ought to remain common, and by what principles cases on cooperation are to be solved. We have at the same time indicated what order of speaking we shall follow.

Article I: The Procuring of Spiritual Goods

— 1. He sins against charity toward himself who neglects his own spiritual salvation: for the most part, however, that sin is sufficiently contained in the accusation of other sins.

2. There is no good to be obtained, or to be procured for anyone, for the sake of which it is lawful to sin, even venially: for that act, since it is repugnant to the divine good pleasure, is not eligible. Evils are not to be done so that goods may come. Cf. St. Augustine, *De mendacio*, c. 9, n. 15 (M. 40, 499).

Wherefore, he who would be impeded from religious life by the office of filial piety, for example, of helping parents gravely in need, cannot enter religion.

3. No one must remain in a proximate occasion of grave sin, on account of any utility or necessity of an individual neighbor or of a community, if he experiences too great a difficulty in converting that occasion into a remote one. The reason is that, as to spiritual goods, each one can or must prefer himself. Wherefore we are not compelled either to serve as soldiers or to relieve the poverty of parents with so great a spiritual loss. Yet if there should be an extreme spiritual necessity of neighbor, a very probable danger, according to the opinion of St. Alphonsus, will have to be approached or tolerated: then by right and deservedly man can trust in greater grace.
4. He does not sin who delays entrance into religion or even omits it in order to take care of a parish where he performs most useful work which another can scarcely perform; in order to relieve a less grave want of parents; in order to console their sad loneliness; in order to care for the education of brothers or blood-relatives. For a religious vocation is for the most part not preceptive; and the reasons adduced are among those which must be called honorable and acceptable to God Himself.

But what, in these and similar circumstances, is to be counseled cannot be defined by one general rule. These things chiefly come to be considered: with what innocence, with what zeal of piety and virtue will life outside religion be led? - What goods will a man obtain for himself and others in

religious life itself? The apostolic life, especially among unbelievers, will be esteemed far more than the common life of many religious in our regions. What good works will he desert for religious life? What manner of acting will be of greater edification? Cf. the things which we have written on this matter in t. I, *On Religious Institutes and Persons*.

— To a neighbor who is placed in extreme spiritual necessity, each one must succor even with certain danger of life: provided that there is an equally certain hope of helping him, and that no graver evil threatens from it. In these circumstances the saying from St. John, epistle 1, c. 3, v. 16, is valid: "We ought to lay down our lives for the brethren." Hence, if another is not present who will probably do it, we must, with danger of life, baptize or absolve a dying person who morally cannot help himself. A graver evil threatening from it can be the spiritual detriment of a flock which would be deprived of the one sacred minister by whom it is helped. Wherefore it sometimes happens that an Apostolic Vicar forbids a missionary, with too great danger to health, to go to a dying person too far distant. A graver evil can also be the hatred which it would draw upon the Church, if, for example, in a violent way someone should wish in our regions to baptize a dying infant, with the parents resisting. (As is clear, secret administration, as far as there is opportunity, will have to be procured.)

— Grave common necessity is equated with extreme necessity, whether because man, for the common good, as a part, must neglect his own life, or because in grave common necessity several will be in extreme need. Cf. St. Alphonsus, l. 2, n. 27. Hence if in time of plague a pastor is lacking, another priest present in the place will per se not be able to desert the sick. He will be bound to remain even more with every inconvenience, if a heretical minister has begun to spread errors, so that there is danger lest the community lose the faith. The pastor himself is forbidden to desert the flock, unless he has substituted for himself someone equally suitable.

— In the grave spiritual necessity of a particular neighbor, only he who from office must care for another's salvation is bound to suffer grave inconvenience. The reason is that it chiefly falls to the neighbor himself to overcome the difficulty.

But if someone can easily succor a neighbor who is pressed by grave spiritual necessity, he has a grave obligation of bringing that help.

Example. — So many are the spiritual harms of boys and adolescents who frequent non-Catholic schools, so many are the ruins of faith and morals which are avoided by the Catholic education of youth, that a grave obligation presses the faithful of striving so that a supply of this kind of education be everywhere available. Wherefore, according to their powers, sufficient alms for this purpose are to be contributed under grave obligation; and, if necessary, even with grave inconvenience. Hence if in some place someone, by taking from goods necessary to his state, would certainly procure Catholic education for several who otherwise would frequent non-Catholic schools, and another means is lacking for averting that evil, he seems to be bound to make this largess.

— You ask why we are not bound to seek far-distant regions in order to succor unbelievers, where so many are in extreme spiritual necessity?

The reason is that the proximate opportunity of succoring is lacking to many who are ignorant of the language, customs, etc.; because the efficacy of the action is uncertain; because it pertains to the common good of the Church, and therefore of those very barbarians, that religion flourish in

cultivated regions and suitable workers be able to be prepared. Hence concerning individual persons it cannot be said that they will be more useful there than here.

Article II: The Procuring of Bodily and Temporal Goods

Principles. — 1. From the order of charity, each one can prefer himself to an individual neighbor in an equal cause of necessity. But when there is question of bodily and exterior goods, it is also lawful, as we said above, nn. 81, 84, to give the first place to neighbor from charity, which at the same time promises us the compensation of a better good.

2. But as long as there is question of individuals, he must prefer persons more joined to him to others toward whom he has no peculiar office of piety. The order to be observed among those persons was indicated above, n. 85.

3. The republic or perfect society can require from private persons that they postpone their temporal utility to the public cause. And it is also lawful to place the public cause before the private cause, even of neighbors, if elsewhere proportion of utility or necessity is had.

4. Never, for helping an individual neighbor in need, must anyone sustain that inconvenience or make that expense which, without sin against charity toward himself, he is permitted to deny to his own bodily or temporal safety.

5. Except for necessity morally extreme, no one is bound to succor the temporal need of neighbor with notable inconvenience of his own. To this pertains that saying: "Charity does not oblige with grave inconvenience."

Hence these responses are understood:

— 1. To neglect one's bodily safety without cause and with grave harm (of death or grave illness) is per se a grave sin; yet often an excuse of ignorance is had: for in that cause, from self-love, we rather incline to excessive care. Yet the case occurs where someone, warned by a doctor concerning imminent danger, does not renounce a certain pleasure or recreation that is almost fatal.

The present life is not esteemed of such value that someone ought by long care, great expense, or extraordinary remedy to recover health.

— 2. We never owe that help to an individual neighbor which would cast us into the same necessity from which we wish to rescue the neighbor. Nor must we give a great sum of money to a poor man for buying costly medicine or for rescuing him from danger of death. Yet this must be received temperately where there is question not of a neighbor who is a stranger but of one closely joined.

On the Precept of Alms. — Already Aristotle (*Politics*, 2, c. 2) preferred to communism a regime of temporal goods by which, not indeed ownership, but the use of possessions would be made common by law or benevolence. By this opinion he so defended private property that at the same time he denied the power of fully withdrawing temporal things from the human race in general, to which, from the first intention of God, they have been assigned and must remain assigned. But riches already procure common utility by the very conveniences which they offer to possessors to be enjoyed: for thus they stimulate more intense and ingenious industriousness [1], and permit more persons to serve the community by nobler studies; they also promote common utility by parsimony,

by which, excessive consumption having been avoided, treasures are preserved for society, capital is prepared; finally, they benefit the common utility more immediately by the distribution among many of necessaries which accompanies and follows the expenses of riches and fruitful industries.

There remains then gratuitous distribution, which can be directed to temporal ends and also to moral and spiritual ends. Hence the twofold character of alms: one narrower, by which material want is succored; the other fuller, by which every genus of needs is succored.

The precept of alms by which the poor are fed is already inculcated in the open pages of both Testaments and in no few places of the Holy Fathers; today, however, it is especially to be urged that temporal riches effectively contribute to diminishing or removing the spiritual necessities of very many.

That precept seems able to be explained thus.

a) Distinction of goods. Goods are called necessary or superfluous; and this either with respect to someone's own life and that of his dependents (with whom he is morally held as one person), or with respect to state or condition. Those things are called simply necessary to one's state without which a man would be cast down from his condition: as if he would have to diminish notably his retinue of servants, his reception of guests, his manner of educating children, or would not have that from which he could provide for unexpected cases of infirmity, etc. Those things are called necessary to the decency of state, both goods without which, within the limits of honorable liberality, he could not continue the same in the accustomed way, and other goods which pertain to caring for a moderate ascent.

The remaining goods are held as relatively superfluous. Absolutely superfluous goods today morally are not had in our regions, where money is no longer accustomed to be laid away idly, but all things are usefully spent (excessive expenses of luxury excepted) in works and businesses by which public riches and even the resources of humble persons increase. But we can call superfluous those moderate goods which, whether they are present or not, morally do not affect the accustomed cultivation of life or increase of prosperity. Hence this proposition 12 was rightly condemned by Innocent XI: "You will scarcely find among secular persons, even kings, anything superfluous to their state. And thus scarcely anyone is bound to alms, when he is bound only from what is superfluous to his state" (Denz. 1162).

b) Obligation according to varied necessity. We must help a poor person in extreme or quasi-extreme need even from goods which in some way are necessary to state. But the case concerning an individual poor person will scarcely occur, since we are not bound by a great force of money to relieve the temporal need of neighbor. But the obligation of succoring a neighbor in extreme or nearly extreme need is grave.

c) If a poor person is gravely in need, this is controverted: whether you must relieve that necessity from superfluous goods, when no other will probably do it, or whether you can reserve your alms for another good work when you cannot conveniently do both. Many permit this option, because they judge it a grave inconvenience to be deprived of it. This seems consonant with the very mind of St. Thomas, 2, 2, q. 32, art. 5.

Therefore you will be held under grave obligation if you propose no other pious use to yourself; if you can conveniently satisfy each intention; if there is question of help which has no other utility. Thus, for example, under grave obligation you must warn him whose house begins to burn, because your warning cannot per se, like money, be deputed to another good work.

He also sins gravely more probably who, having relatively superfluous goods, frequently repels poor persons laboring under grave want. For it seems little consonant with the Scriptures that we restrict their grave admonitions to the rare case of extreme necessity. Add scandal and social harm.

d) In common necessity, a grave obligation is not proved, although it is affirmed by many. Cf. St. Alphonsus, l. 2, n. 32. And it is less established today, since by public subsidies to which all citizens contribute, temporal needs are provided for rather richly, and money fruitfully invested has a use which is not useless to the less fortunate. No one doubts that there is at least a venial obligation of sometimes giving alms, if you have goods superfluous to nature and state.

e) Private men are not bound to seek out the poor. Yet if they have a serious doubt concerning someone's extreme need, they must make themselves more certain about the matter. The usual assertions of beggars that they are fasting, without bread, are seen per se not to suffice for making a doubt.

[1] Cf. our *Principes de morale sociale*, n. 148 ff.

— Concerning the quantity of alms to be distributed in common necessity of the poor, there is no better and more expedient rule than that each one should accommodate himself to the uses of pious persons of his own condition. Writers propose this formal rule: that there is to be given that by which, once the alms of other rich persons have been brought together, the poor are not destitute of help. St. Alphonsus, l. 2, n. 32, judged reasonable that more certain assessment, that someone should give the fiftieth part of his revenues, if that fiftieth part belongs to superfluous goods. (Some declare that one abounding in revenues can be content with a smaller proportional part.) Thus we explain, from the authors whom the Holy Doctor, l. c., seems to approve, the rather ambiguous place of *Homo Apostolicus*, Tr. 4, c. 2, n. 19: "It suffices if the fiftieth part of annual revenues which are left over is given." Several, for example, Aertnijs-Damen, I, 364, Q. 2, understand this place concerning the fiftieth part of the annual surplus. It is clear that here there is question only of alms more strictly so called, by which food is furnished. What seems to have to be said today, cf. below, n. 108.

Alms from the Goods of Others. — He who has his own goods must give alms from these, not from another's goods. Except the express or tacit consent of the owner. Thus faithful servants, especially those who, because of long-standing services, are shown as pertaining almost to the family properly so called, do not seem to be prohibited from presuming consent of this kind, and from helping the master honestly, prudently, and moderately in distributing an offering.

That goods taken by theft are not matter of alms but of restitution is manifest per se. But he who is burdened with debt is forbidden to make the condition of creditors worse by his gifts: yet he ought not for that reason abstain from moderate alms.

A wife, as such, can, in our regions, give moderate alms. For notable alms, unless she freely administers her own goods, she per se needs the consent of the husband. Yet she can presume that consent more easily than a son, and the latter more easily than a servant.

Those who by office care for the goods of others, such as tutors and curators, can make from the goods administered by them those alms which it would per se be becoming for the owner to make. In this matter, as in administration, they supply for the owner. The same is to be said of those who govern a community of persons.

General Conclusion on the Office of Alms. — 1. If you consider the controversies of moralists, you will be persuaded of this: that the positive precept of charity resists accurate definition; it is to be exercised not by perturbation of fear but by a freer and more generous impulse: "God loveth a cheerful giver" (2 Cor. 9, 7).

2. If you turn your mind to human customs, it will go well for the cause of the poor and of good works that the rich determine beforehand what proportional part they wish to distribute for pious ends. Even if it is very small, they will for the most part give more than if, when an occasion is given, they pay this or that liberal contribution. How many there are who think themselves to have been ample benefactors who, if they should calculate the annual sum liberally spent by them, would blush at their own parsimony!

3. If you look to our times, the form of manual alms given to street beggars, this intimate and more blind demonstration of mercy, is esteemed less day by day. But at the same time there succeed, as if in its place, many works of common and more prudent beneficence, which everywhere call forth the charity of the good: more spiritual necessities especially must be relieved by Catholic institutes; and from distant regions evangelical workers and the newspapers themselves, which narrate the sad fates of many peoples, implore mercy, so that there is no one who can think himself released from the office of temporal beneficence.

Material Estimation of Alms Understood in the Fuller Sense. If a man to whom all necessary or useful things are abundantly available is at the same time relieved of every family burden, no reason is seen why he should not assign all, at least, of the revenues which are left over to pious works. This must be said with stronger reason of sacred ministers, especially if revenues have proceeded from the sacred ministries themselves. Did not Ecclesiastes, 4, 7, already mock him who, without son and brother, bore eyes never satisfied with riches, and did not consider for whom he labored? Yet because "not all take this," as a reasonable norm, if no peculiar general necessity demands more, we propose this norm of acting: that from annual revenues which remain after all expenses, a proportional part be deputed to pious works; which proportional part could be:

If revenues are left over	Possessor without family burden	With 3-6 children [printer uncertain; percentage columns indicate 6]	With 7-10 children
25,000 fr.	20 p.c.	10 p.c.	5 p.c.
50,000 fr.	24 p.c.	12 p.c.	6 p.c.
75,000 fr.	26 p.c.	13 p.c.	6 1/2 p.c.
100,000 fr.	28 p.c.	14 p.c.	7 p.c.
150,000 fr.	30 p.c.	15 p.c.	7 1/2 p.c.
200,000 fr.	32 p.c.	16 p.c.	8 p.c.
250,000 fr.	36 p.c.	18 p.c.	9 p.c.

If revenues are left over	Possessor without family burden	With 3-6 children [printer uncertain; percentage columns indicate 6]	With 7-10 children
300,000 fr.	40 p.c.	20 p.c.	10 p.c.

But a norm more positively proved by ecclesiastical writers was this: that those who could do so without detriment to the family should divide their resources (annual resources, as we think) into three parts, so that the first be deputed to the poor; the second to religious worship; but the third be assigned to supporting the family. (Spiritual Exercises of St. Ignatius, Rules to be observed in distributing alms.)

You will observe that by us the proportion itself is increased for a greater sum of revenues; whereas in the age of St. Alphonsus they rather diminished the same proportion for the same ratio. But, unless we are deceived, they established this concerning alms alone strictly understood and which then was more circumscribed by place: satisfaction was easily given to the common necessities of the poor by an absolutely greater sum. But if, as today we must, we take alms in a broader sense and extension, since the necessities are inexhaustible, there seems to us to be no reason why the rules of charity should be set forth according to another reason than the rules of taxes, that is, according to capacity, which, the greater the revenues are, does not decrease but relatively increases.

Scholion. On Alms by Word and Action. — Although, less than exterior things, the inborn and acquired endowments of talent are common in first origin, since from the beginning and from their very nature they are joined with the person, nevertheless they are not ordered by divine Providence to the utility of the learned or skillful man alone; but the law is to be observed which Leo XIII expressed in these magnificent words: "The summary is: whoever has received a greater abundance of goods by the gift of God, whether they are of the body and external, or of the soul, has received them for this cause, that he should use them for the perfection of himself, and likewise, as a minister of divine Providence, for the utilities of others" (Enc. *Rerum Novarum*, 15 May 1891).

Therefore the alms of counsel and of any beneficent action is laudable and commanded. Thus advocates, physicians, and surgeons must help poor persons in need by their art even gratuitously, by an obligation which is to be estimated from the necessity of the one in need and the inconvenience of the one succoring, and sometimes from the office assumed. All works of mercy, both corporal and spiritual, contain the character of alms.

Article III: Procuring the Good Action of Neighbor

— Human society brings it about that we can help or impede the actions of others by words or admonition, by example, and by physical or moral participation.

According to the varied kind of action, charity will counsel or command one or the other. Hence we must treat, in order, of fraternal exhortation and correction; of edification and scandal; and of cooperation in the good and evil action of neighbor.

1. - On Fraternal Exhortation and Correction

The Good and the Modes of Fraternal Exhortation. — Since we are all weak in performing a good work, a most suitable exercise of spiritual mercy consists in the pious exhortation by which neighbor is stimulated to good actions. Pious exhortation of this kind can be common and public, in sermons

directed to the people or in addresses to some community; it is most usefully made privately, whether in the sacrament of penance or outside the sacrament. Charity will move the confessor not to neglect in the least the most favorable occasion of spiritual counsel which the spontaneous accusation of the penitent offers him, especially when there is question of those who, rarely approaching the sacraments, would scarcely ever otherwise hear the spiritual counsel of a friend. Yet even with pious persons that method is usually not to be omitted. It is wont to be pleasing to penitents, especially if the exhortation is not general and indefinite, but adapted to the proper soul. And even in merely private conversation, how often have prudently persuasive words been the fruitful beginning of great good! Indeed this kind of apostolate among men of the same condition is proclaimed as most efficacious. Further, with attention to the object, exhortation is of a twofold kind: one, directed to the intellect, rather teaches, instructs, indicates or recalls the opportunity of spiritual gain; while the other, acting upon the will, moves more and adds courage for doing good. With attention to time, one again precedes a good action, urging it on, while the other approves and praises it when it has been well done. By sincere and temperate encomium, alien from flattery, men are wonderfully stimulated to attempt better things, while many are gravely chilled by the silence of others and almost lose heart.

— Fraternal reproof or correction denotes an admonition by which someone, moved by fraternal charity, tries to call neighbor back from sin. It is an exercise of spiritual mercy attempted in a spiritual necessity of the common grade. And both by the person correcting and by its end it differs from admonition and from authoritative and judicial correction, which only a public person performs, whether secretly or publicly, for the public or in some way common good to be guarded after a delict has been avoided. In the canonical forum this is ordered by cc. 2307-2309. Its use is rarer in the civil forum, where for the most part only vindicative justice is exercised, and correction consists in the very imposition of the penalty.

Interpreters commonly read the precept of fraternal correction in the place of St. Matthew 18, 15: "If thy brother shall sin against thee, go and reprove him, etc."

It is established by reason itself: we must from charity, apart from grave inconvenience, avert grave evil from neighbor. Nor is it an obstacle that no one sins unless willing, nor that alms are owed to him who labors under voluntary poverty. For the man whom an unhealthy desire agitates is to be compared with one raving, who without another's help will scarcely abstain from inflicting evil upon himself; and there are besides ignorances to be driven away, and also involuntary dangers to be removed.

Matter of Correction. — 1. Every mortal sin of neighbor is per se sufficient matter that this precept oblige under mortal sin. For that which takes away spiritual life induces a sufficient necessity of correction. Venial sin begets no grave obligation of correcting, nor even a light one unless you can do it most easily. And only venially does a private man sin who, on account of fear, shame, or pusillanimity, thinks that he is not so obligated, or is less fit for it. For to such a one, from an affection of this kind, there generally arises a grave inconvenience with which charity obliges less. But judgment must be made more severely concerning a Superior, to whom it pertains from office to correct. He, for guarding the strength of discipline, must easily correct even venial faults and transgressions of rules under grave obligation (not, however, in individual cases).

2. What has been said thus far holds also concerning sins already done or to be done from vincible ignorance, especially gravely culpable ignorance. But if the ignorance has been invincible, the very foundation of correction properly so called, that is, delict, is withdrawn. Yet correction more broadly so called enters in, which is imposed by the office of teaching the ignorant. This office is more proper to Superiors; yet the obligation also affects others because of the harm which an uncorrected defect may bring either to the ignorant person himself, whether there is question of points necessarily to be believed for salvation, or of lust which from custom would become tyrannical, or of other matters; or to others, whether they suffer scandal thence, or are harmed in goods of fortune, reputation, or body; or to the very honor of God.

On this matter these things are to be observed. Transgression of the natural law is always harmful; wherefore there is at least a light obligation of warning him who materially violates that law. - When there is question of goods of fortune which, by a correction made, merely change possessor, but not of harms which bring no equivalent profit to anyone, correction does not oblige under grave sin unless the legitimate possessor is pressed by grave want or, for another cause, ought to be preferred by you. For it matters little per se to the common good that exterior goods be detained by this one rather than by that one; and good faith per se takes away every scandal.

But if someone by accident, for instance from forgetfulness of the day, and without scandal, violates some human precept, for example of fasting or abstinence, no one contends that there is a grave obligation of warning; and not a few deny every obligation.

Persons Obligated. — Private persons are obligated from charity alone; parents also by piety; Superiors and Prelates from strict office. This office is of religion or quasi-piety, indeed of commutative justice, if it is part of an office undertaken.

And although piety obliges no less than justice, the common good to be cared for brings it about that Superiors are held with a graver inconvenience than parents themselves.

Conditions of the Obligation. — The conditions of the obligation are gathered from the necessity of correction, from the probability of effect, so that in doubt you are excused, and elsewhere from the inconvenience which correction brings with it. That these may be explained more fully:

1. Only a Superior must investigate. Nor must he do this indiscreetly, by inquiring curiously about individual matters, but only about those concerning which indications have been given. For a private man it is necessary that the neighbor's sin or danger of sin be certainly evident of itself; nor does a doubtful sign suffice. An inquiry which a private person would attempt would be odious and rather vicious.
2. Alms are to be given only to one in need. Therefore, that you be held to correct, it is necessary that it be at least probable that there has not been amendment, nor that there will be amendment without admonition.
3. A private person is not held, if another equally suitable person is present who is thought about to correct.

4. Without hope of fruit no obligation of correction presses at least a private man. For a Prelate sometimes, for avoiding scandal, must make even a correction immediately useless. It is necessary that a strong reprehension of vice confirm the good. - Where there has been a small hope of fruit, the grave obligation will cease, at least in a private person. Correction which perhaps would be harmful is no longer prescribed, unless a reason of a greater good concurs. In doubt, however, correction is to be presumed useful. And as long as there is hope of fruit, correction will have to be repeated.

5. Outside a suitable place and time, correction is not to be made. Nor is a private person held with grave harm to himself.

Corollary. - Therefore a grave obligation of correction in private persons (not likewise in Superiors or Confessors) will be present rather rarely. Regularly the scrupulous are excused from making it, since they are incapable of employing opportune counsel in this matter, and the obligation would be of very grave inconvenience to them. Finally, with those whose disposition he does not know, a private person will do better to omit correction. Cf. concerning one hearing detraction, St. Thomas, 2, 2, q. 73, art. 4.

The Order to Be Observed in Correction. is indicated by Christ Himself: first that it be done entirely privately, then before witnesses, then that the matter be referred to the Prelate of the Church or to the Superior. For the words "Tell the Church" are commonly admitted to mean as much as "tell the Presidents of the Church." Cf. Knabenbauer on Matthew 18, 17. The reason is that reputation must be preserved.

A public sin, or one so notorious that it cannot be hidden by any evasion, can at once be corrected openly or referred to the Superior; this is per se manifest.

The utility of the delinquent himself (which is proportioned to the harm of revelation), an equal harm of an innocent person to be prevented, harm to the community, or the special or general consent of the delinquent himself, also permit that, with that order omitted, the matter be referred immediately to the Superior. And, as our customs are, although the Lord said that one or two should first be employed (St. Matthew 18, 16), it will not often happen that other witnesses besides the Superior, or before the Superior, must be called in.

Is it preferable to refer the matter at once to the Prelate? Let us receive these things from St. Thomas, Quodlib. 11, 9, 10: "This must be held as a rule, that in all these things charity must always be preserved, and that which seems better and more expedient; and if he intends this, namely the amendment of neighbor, and preserves as much as he can the good of charity, then by denouncing he does not sin."

But let Superiors themselves not give easy ears to spontaneous accusers who, under an appearance of the common good, often seek themselves. Nor let them hold one denounced as convicted or suspected before they have heard his explanations.

Denunciation. — Since fraternal correction is mixed with some denunciation, it seems worth the labor to hand down these few things concerning denunciation, especially since every denunciation is at last ultimately directed to warding off evil, whether one's own or that of neighbor.

A threefold denunciation is distinguished: evangelical, canonical, and judicial. The first is made to a Superior as to a father, and has as its end the good of the delinquent himself. - The second is received by a Superior as president of the community whose good he must provide for; and it tends to preserving the safety either of an innocent person or of the community. - The third is made, on account of the common good, to the public avenger of security, whether evils which the guilty are planning must be impeded, or at least by the punishment of the delict the guilty must be restrained and courage must be added to the good.

Judicial denunciation is per se lawful, to be made without any other consideration: because the office of the judge cannot be supplied by any private action, and the reputation of the delinquent can be neglected before the common utility which the punishment of delicts brings. Only by accident, in certain circumstances, on account of excessive harm either of a private person or of religion (as if a very Catholic person or a priest is denounced), will it have to be omitted from charity or religion. Where it becomes necessary for avoiding public harm, the same denunciation will be prescribed.

Canonical denunciation is subject to the same rules as fraternal correction itself, of which it is a certain extension. Here therefore the reputation of the guilty person will have to be spared where he can prudently remain unharmed. Therefore denunciation will per se have to be omitted if its end is obtained sufficiently by private correction. Provision must also be made for common charity, which is easily shaken by an imprudent denunciation. The very person of the Superior, more or less benign, discreet, and prudent, must be attended to. Yet in an equal cause of utility or detriment, the innocent person will have to be preferred to the guilty.

Evangelical denunciation is the very mode of fraternal correction which, after matters have been prudently weighed, seems to be preferred to immediate admonition. By evangelical denunciation the Superior can proceed only as a father, and therefore impose only a medicinal penalty. Yet nothing prevents him from forbidding certain things to the denounced subject in virtue of holy obedience or under penalty of excommunication, if that seems likely to profit the good of the same subject.

From canonical denunciation it is lawful for the Superior to take all sanctions which seem conducive to guarding or restoring common discipline, and this even if these sanctions are foreseen by accident to be harmful to the denounced person.

Judicial denunciation gives place to public vengeance.

If the matter bears it, the Superior can declare to one referring evangelically the obligation of canonical or judicial denunciation, and strictly command either to the same person. But as long as evangelical denunciation has not been legitimately changed into canonical or judicial denunciation, the Superior per se, by the general law of entrusted secrecy, is prohibited from acting canonically or judicially. I say per se, because the very obligation of entrusted secrecy is circumscribed by certain limits.

Corollary. — 1. The indication of hidden corrupters in colleges over which prudent Superiors preside is regularly to be strongly advised; yet the harm of him who is reported must be weighed, since perhaps, if he is expelled, spiritual ruin may threaten him. - 2. As long as there is question only of the harm of one or another, it does not seem, if the inconvenience of the one reporting is grave, to be imposed strictly. A grave inconvenience would exist if the one reporting would have to manifest his own delict thence, or if as an "informer" he would become hateful to others. - 3. But if corruption of

many, infamy of the house, or another reason of common harm is feared, the delation will have to be made, with grave harm to oneself disregarded. Yet the confessor will be able to be silent about the matter, if the warning seems plainly about to be useless, or if there must be doubt concerning the efficacy of the denunciation made for preventing evil.

He is not yet a corrupter who has spoken less chastely. But it must be seen whether the occasion was extraordinary, or rather whether from some habit he mixes base conversations; such a one is per se to be reported.

According to the quality of the Superior, the manner of acting can be changed. But the Superior is to be presumed prudent and discreet.

2. - On Spiritual Edification and Scandal — I. On Spiritual Edification

— In ascetical works, the word edification is customarily taken metaphorically to designate that positively beneficent action which even unconsciously a man sincerely devoted to cultivating piety and virtues exercises. The wonderful power of good example is expressed and confirmed by the proverb itself: "Words sound, examples draw." And nothing more excellent is to be adduced in praise of good example than these words of Christ: "So let your light shine before men, that they may see your good works, and glorify your Father who is in heaven" (St. Matthew 5, 16).

Yet virtue is not therefore to be feigned or simulated, as we are also taught by Christ: "But thou when thou fastest, anoint thy head, and wash thy face, that thou appear not to men to fast, but to thy Father who is in secret" (St. Matthew 6, 17. 18). For merit then perishes, if these things are done for human glory alone, and edification itself perishes, if suspicion of vain glory arises.

There are, therefore, actions which, as done openly, always edify, because they yield directly to the honor of God, and by the very manifestation virtue is exercised: for example, profession of faith, observance of an external law, for example of hearing Mass, of abstaining from meats. And there are good actions which, because they are in esteem among all, are easily mixed with a less right intention. These are rather to be hidden than displayed, and circumstances must be permitted to manifest them.

Moreover there is a certain exercise of virtue, either imperfect and partial, or incautious and inelegant, which excites aversion mixed with a certain envy. While, on the contrary, simple, humble, and modest virtue draws souls to God and to itself. Aptly did St. Paul proclaim charity to be kind (1 Cor. 13, 4).

That a man may acquire for himself the merit of edification he must sufficiently intend it. Cf. I, 130. This intention is manifest when someone deliberately goes before others by example, for example in confessing the faith, in undergoing danger for a noble cause, in performing an office of charity. But what must be said concerning that edification which is given by virtue that does not know itself and, from modesty, hides itself? Although distinct knowledge of that edification escapes the agent, nevertheless the humble man does not ignore the power of good example in general, and often says or does those things which manifest the intention of helping neighbor spiritually in every way the opportunity for which is given to him. Therefore an intention sufficient for merit does not seem lacking to him.

II. On Scandal

The Notion and Division of Scandal. — Scandal properly signifies a stumbling-block which, placed in the way, prepares a fall for him whose foot strikes against it. Metaphorically, it is a saying, deed, or omission on whose occasion neighbor easily sins. - Per se, an action of this kind is only something done less rightly, although by accident a very good action can give occasion to sin. Is not Christ Himself said to have been set for the ruin of many? When such a thing happens, scandal is called merely received or passive, but not actively given.

Therefore they are accustomed to define active scandal as a deed less right, furnishing to another an occasion of spiritual ruin. It is less right insofar as it is evil in itself, or has the appearance of evil. - Active scandal is divided into direct, when something is done with this intention that another should sin, for example direct solicitation to sin. And if, from some hatred of God or of neighbor, the very character of sin is formally intended, scandal is called diabolical. It is indirect when the sin of neighbor is indeed foreseen and permitted, but not intended.

Passive scandal is the occasioned sin itself. If it is connected with active scandal, it is called scandal of the little ones or of the weak; if it has been merely received from the malice of the one scandalized, it is called pharisaic, because the Pharisees, from hatred and envy against Christ, on occasion of His good deeds, suffered such scandal.

What shall we call that which not a few poor, rude, and unlearned persons suffer on occasion of priests, religious, and their action, because, deceived by evil writings, they represent those persons and that action to themselves under a false color? It is rather scandal of the little ones; yet it arises less from the priest himself or from his action, than from the calumnies of those who hate religion.

But observe that not the sin of another itself, but only temptation, is the immediate effect of scandal given: no one sins unless willing.

Further, passive scandal is sometimes a sin of the same kind as the scandal given, such as is necessarily had among accomplices; and not rarely it is of an entirely different kind. Thus scurrility and the impurity of a priest induce contempt of the sacerdotal order and of religion. - It is also per se manifest that passive scandal can be had without active scandal, and conversely. Indeed an evil action, for instance blasphemy, can give beginning to good actions, such as holy protests and expiations. Nor is scandal the very wonder or horror of those seeing and hearing, which they are accustomed to call by the name of scandal. Therefore he who sins before others is not always at the same time actively scandalous, but only then when, after the circumstances of the sinner and of the witnesses have been considered, it is to be feared lest among the witnesses there are those who are drawn to a sin which otherwise they would not have committed. On account of the depravity or probity of the witnesses scandal can be absent: on account of depravity, as if someone blasphemes or violates chastity before others who, prepared to do the same, are in no way moved by that example; on account of probity, as if someone contends, quarrels, or strikes before the meek. Nor will scandal be given to witnesses so accustomed that they are in no way excited by the dangerous thing. Yet evil actions which are publicly committed are deservedly presumed scandalous, especially by persons of certain name or authority.

The Sin of Active Scandal. — 1. Concerning the sin of direct scandal, there is no room for doubt; and it is established that the species of the sin to which someone intends to lead another is

contracted. - Diabolical scandal, since it contains formal hatred, denotes a special contrariety to charity, which must be opened in confession.

2. But the author of indirect scandal also sins per se. And his sin is contrary to the office of fraternal correction. For if charity obliges us to impede the sin, at least grave sin, of neighbor, much more does it impose upon us that we not be the cause by accident (that is, the occasion) of another's sin. - But contrary to what many and grave authors hold (for example Sanchez, *Decal.*, l. 1, c. 6, n. 3), that sin is opposed only to the common obligation of charity, not to another virtue. For that which is outside the action and intention of the agent does not constitute the species (2, 2, q. 43, art. 3). But a sin merely occasioned is outside the intention, as is manifest, and also outside the action of the agent. For the sufficient cause of sin is the proper will of the one sinning (*ibid.*, art. 1 ad 3). Wherefore the varied conditions of the persons who suffered that scandal are not to be declared, except the quality of parishioner, son, and the like, to whom the author of scandal owed spiritual edification by a special title; nor is he held to restitution who by example alone induced others to theft or damaging.

Permission of Scandal. — Scandal can be given by an evil act and by an act which has the appearance of evil. And it can be merely received, whether from weakness or from malice. Hence:

a) It is clear that he always sins who by an evil act is the author of scandal. And under grave obligation I must avoid inducing another by my evil deed into such danger of grave sin from which he may extricate himself with difficulty. For this is to cast another into spiritual necessity, which I ought to drive away unless I were excused by proportionate inconvenience. If another is tempted merely to venial sin, even directly, the author of scandal per se will sin only venially.

b) If the action merely has the appearance of evil, the author of scandal can be excused by proportionate inconvenience. And if there has been grave danger of many, grave inconvenience must be suffered by me to avoid it. Indeed if the whole Christian life, the very faith of many, is in danger, I shall be excused by no harm to myself.

c) Scandal merely received or passive per se cannot be permitted: because the sins of neighbor, if we can easily do so, we must impede. A proportionate cause of necessity or utility excuses the permission of scandal. These things are to be weighed: the inconvenience of abstaining from the action, the gravity of the evil which is feared in others, the proximity of the occasion of sin, the nature of the scandal, whether it is of the little ones or pharisaic. A greater cause is required that scandal of the little ones be permitted than pharisaic scandal; pharisaic scandal can be permitted for any cause whatever, unless from delay of the action a great fruit is hoped.

Indeed passive scandal sometimes must be permitted; for, to avoid it, it is not lawful to sin, or to expose one's own salvation to grave danger, or to harm others gravely, especially the community.

Reparation of Scandal. — He who by evil example has scandalized others must give them good example, insofar as the force of the evil example is thought to remain in some way. He must remove that force from charity; yet this is not true restitution, but rather a cessation from an evil action. This reparation will vary according to the nature of the scandal (public, occult, against one's proper office or not). - For the most part a general reparation which is contained in open conversion will be able to suffice. Cf. Aertnijs, I, 395. 396.

Some Applications. — 1. Two who commit sin simultaneously are necessarily scandalous to each other. For even if each conceived the evil intention by his own movement, nevertheless the execution, or exterior sin, required the complicity of the other, so that even the accomplice gave the instigator an occasion of sinning. Certainly he sins more who excited or induced another to sin. Yet because this is a merely aggravating circumstance, it need not be opened in confession, contrary to what some opine.

2. It is not lawful without cause to ask an honest work from him who will not perform it without sin, for example to ask an oath from someone who will perjure himself, or a sacrament from a minister whom you know to be living in a bad state. Yet this will be lawful on account of a reasonable cause: for the other sins from his own malice. Indeed, if, for example, the unworthy minister is already actually determined to sin, your petition merely anticipates the external sin, so that the petition does not seem to many to be gravely sinful, even if it is made without cause. Cf. Lugo, *De Iure et Iustitia*, d. 25, n. 234, against St. Alphonsus, l. 2, n. 47. (He argues from this, that external sin increases the malice of the internal will.) Hence they simply permit the faithful to ask sacraments from their bad priest. For they have a right to this administration. Likewise the wife of an onanist husband has a right to copulation. Therefore she will be able to ask this, unless by moderate abstinence she can draw her husband to better counsels.
3. On account of pharisaic scandal, no one ought to omit or defer good things not necessary, whether spiritual or even temporal, according to that saying of St. Matthew 15, 14: "Let them alone: they are blind and leaders of the blind." Except if from delay a notable fruit is hoped.
4. More easily and more often those good things are to be deferred or omitted on account of scandal of the little ones. Thus entrance into religion will have to be deferred on account of the scandal of parents, if their consent seems about to be obtained shortly.
5. When an explanation has been given which removes the appearance of evil, for example which shows a suspect action to be just, scandal of the little ones can easily be changed into pharisaic scandal, so that the obligation of avoiding it is greatly weakened.
6. Therefore scandal of the little ones excuses from fulfilling certain positive precepts of fasting, abstinence, etc., unless the omission would be more harmful to the one omitting. The case can be that of a wife whose husband would be gravely offended by abstinence on Friday; of a woman who in church would have before her a young man by whom she is basely desired. Some oblige, in such circumstances, that precepts sometimes be omitted, because the law of nature concerning avoiding scandal must be preferred to a positive law. St. Alphonsus, l. 2, n. 51, thinks this opinion more probable. But the observance of a precept seems to others to be a just cause for permitting scandal. Therefore the obligation is not established, unless by office you ought to impede the sin of the person about to sin.
7. Ecclesiastical prelates, for avoiding disturbances, will sometimes have to omit certain sacred ceremonies; - they can, for avoiding greater evils, dissemble the sins of subjects which otherwise they would have to correct; - they neither must nor per se can omit lawsuits or those things which are necessary for guarding ecclesiastical goods, that scandals of Pharisees, or even of the little ones, may be avoided. Yet in a special case it will be better for them to yield their

right; but unless the matter is of small moment, the assent of the Holy See will have to be sought.

8. A beautiful girl, decently adorned, need not be anxious concerning the temptations and sins of the men whom she will meet. Yet if she can easily avoid a man whom she knows to sin on her occasion, and can extinguish that lust by one or another flight, she must do this under grave obligation. (Aertnijs, 384, 4.)

9. On account of a just and proportionate cause, it seems lawful that you place an occasion, yet not a proximate occasion, of sin: thus a father who deservedly suspects his son to be prone to stealing can place an occasion of theft before him in order to detect and correct him. For detecting and expelling or punishing servants, the master will be able to do the same. Nor do they prohibit a husband from prudently and cautiously testing the fidelity of his wife. Indeed, on account of a very great cause, especially a public one, they say it is not repugnant that a woman, yet doing nothing immodest herself, permit a temptation to arise on her occasion, as Judith is narrated to have done in Sacred Scripture.

— You will ask whether it is right to ask from another an action honorable in itself, which he, on account of an erroneous conscience, cannot perform without sin? Suppose an attendant of false worship (Jewish, Mohammedan) to serve you, who must abstain on the Sabbath from servile works or must observe certain fasts; or suppose someone to be unjustly detained in prison, the injustice however being unknown to the guard, or to be prevented by hostile dominion from going out from the borders of the fatherland.

Resp. Without a grave cause it would be unlawful thus to induce another to subjective sin. On account of a grave cause, as if the work is urgent and you cannot seek it from another, or if you vindicate your right, this will be lawful. For the intention of the one asking is borne toward an action objectively good; the sin, which must be attributed to false conscience, is accidental: this is merely permitted by the one asking, on account of a just cause. But, if the one asking the action has this opportunity, after an explanation has been given concerning the objective honesty of the act, he must try to spare the other the subjective sin itself.

Nor should money perhaps to be paid to a guard or soldier cause scruple: for it is paid in order to redeem oneself from an objectively unjust vexation.

On Womanly Adornment. — a) Garments can derogate from the rules of decency in two ways: insofar as they excite lust, and insofar as they manifest a certain boldness contrary to modesty. Of the former character are the too-short garments of theaters and circuses; there are also garments too thin or too few, which have begun to be used in worldly dances; there are also garments which are fitted so artfully to the body that they either display every form of the body or exaggerate the sexual marks; finally there are - and this must not be disregarded - shorter garments of boys and girls: many are tempted on their occasion. Rather of the other character are indecorous uncoverings of the neck. And note that lust is excited more by mysterious veils than by complete nudity.

b) Those who introduce adornments that are not very decent, as well as the women who first wear them, sin gravely: they are the cause of innumerable sins, nor is their fault weakened by any excuse.

c) Those who merely accommodate themselves to accepted customs are rarely to be blamed gravely, especially since the manner of wearing garments has much force for diminishing, as also for increasing, indecency.

d) Those who increase indecency, according to the graver or less grave mode, will sin gravely or lightly.

e) The remote cooperation of a maker who, when asked, makes garments *a la mode*, practically will be excused by necessity or a grave cause.

f) A woman who foresees that it will happen that many in general are scandalized by her vain and superfluous adornment (yet not base), is not bound under grave obligation to lay it aside. For the occasion is in itself remote; moreover it is universal and perpetual, which beautiful women necessarily furnish when they go out of doors, and it would be too grave for the same women to abstain from adornment.

N. B. The rules concerning womanly adornment gathered from St. Thomas are proposed by Ballerini-Palmieri, t. 2, n. 269.

But Catholic and pious women accept an excessive servitude to usages which the less pious, indeed prostitutes, introduce. Wherefore an effort must be made that, a league having been formed, they vindicate their liberty, I say the liberty of elegant modesty. Nor can the cultivation of modesty be sufficiently urged upon all, both for themselves and for the family which they have to rule.

And because this is the head matter for amendment, as much as is in our power, we must procure for the common people that solid instruction turn the souls of girls away from futile matters toward fulfilling their grave offices, both familial and social.

On Dances. — a) No modern dances seem positively to be approved, if perhaps you except certain innocent dances which in some villages or Catholic regions are celebrated rarely, for example on the feast of the patron of the place. Berardi testifies that he has known such dances. On the contrary, there are also popular dances which end in true Bacchanalia.

b) While a few years ago the question was raised about certain modes of dancing, especially about that which is called the "waltz," today more attention must now be given to dances which figure a certain action.

Although certain modes of dancing are less pleasing, there is none which, where it has been introduced, we can condemn absolutely. But dances of the latter kind, unless they represent a sacred procession or a warlike action, are accustomed to express or imitate amorous deeds, for example the pursuit by which the male follows after the female; to express or imitate them in such a way that the very mode of execution casts the actors into an occasion scarcely not proximate of lust. Therefore it has happened that some, for example the "tango," have sometimes been reproved by ecclesiastical authority (*).

(*) Yet that you may respond prudently, this also must be observed: it sometimes happens that, with the name retained, the vices of certain dances are corrected, almost as corrected editions of evil writers are customarily published. - But again the license, neo-pagan and increasing day by day, makes matters worse and exaggerates the incentives of passions. What is to be said of the fact that in the very art of learning dances, under a futile pretext, dress wholly immodest has begun to be used?

Nor only immodesty of dress, but several other, more recent, "worldly" usages seem as it were to declare war on virtue. Cf. Josue Germain, *Dangereuses? Enquete sur les danses modernes*, Paris, 1923; and, concerning that work, Doncoeur, *Etudes*, April 1923, t. 160, p. 193 ss.; or Hocedez, *Nouv. Rev. Theol.*, 1924, t. 51, p. 32 ss.

c) Yet it can happen that for certain richer young men the intercourse of persons with whom they must observe the laws of civility, even if they mingle with honorable dances, is to be preferred to the vulgar intercourse of taverns to which otherwise they would be addicted.

d) If any wish or ought to go to dances, they must at least take care that they have honorable company. Masked dances are more dangerous, since they render the lustful more audacious and more impudent.

e) Penitents will have to be judged according to their case. Absolution is not to be denied to those who have not sinned. For those who are accustomed to sin in dances, dances will have to be prohibited, if the dances themselves, and not the weakness which is found in every association with women, are the proximate occasion of sin, and the occasion is not morally necessary, as it can be, for example, for a wife accompanying her husband.

— You will ask whether it is lawful, for avoiding a greater evil, to counsel a lesser evil, or whether that counsel is to be accused of active scandal.

The matter is controverted. Some deny that this is lawful, because the counselor of a lesser evil still remains a counselor of evil; others think it lawful, because the counsel merely affects the note of the lesser evil, and the evil which remains is neither intended nor has its cause in the counsel but in the evil will of the other. Or, if you prefer, the counsel, because conditional, is reasonable. For it is rendered in these words: since you want the greater evil, do rather the lesser. Thus Lugo, *Iust.*, d. 19, n. 42 ss. Yet others think that this reason is valid only when the lesser evil is contained in the greater, or when there is question of evil to be inflicted on the same person. In this opinion, it will be lawful to counsel the mutilation of a person whom the other intended to kill; or in general theft or fornication to him who had determined to commit killing or adultery. But it will not be lawful to counsel him who intended by theft to despoil a poor man that, leaving such a one, he should take money from a rich man, because the rich man is reasonably unwilling with respect to that counsel. Therefore make an exception if, on account of the small quantity, the rich man cannot reasonably be unwilling. But since a prostitute is not unwilling, the designation of a prostitute to be chosen before a married woman does not seem to be reproved if it has been made by the counselor with the intention of diminishing the evil.

We judge this third opinion to be truer. Yet one must beware of the scandal which the counsel can bring with it. For which cause, unless we are deceived, on 22-23 Nov. 1922, the Holy Office denied that it was lawful that a confessor counsel dimidiate copulation to an onanist husband. For the Bishops of the Netherlands, in the preface of their petitionary booklet, had indicated why, in the concrete circumstances, that counsel would be scandalous, insofar as it would offend pious ears and pave the way for propagating Malthusian arts. Cf. *Per.* XII, p. 33-37.

On this matter cf. Lugo, *Iust.*, d. 19, n. 13 ss. He also, nn. 50-54, discusses and benignly solves the question concerning him who counsels an equal evil, because that counsel also is purified by this condition having been placed: "If you are determined to this, do that other." And he even concedes

that to one hesitating between two determinate men, which he would harm, he can be counseled that he damage Titius rather than Caius, at least insofar as he wishes to avert evil from Caius.

3. - On Cooperation in the Good and Evil Action of Neighbor — I. The Notion and Division of Cooperation

— Cooperation, by the force of the word, denotes the simultaneous action or operation of two or more. Thus in every good action we cooperate with the grace of God. Cooperators can either all assume principal parts for themselves, or some principal parts and others secondary parts. These latter are more strictly called cooperators: yet in such a way that the distinction regards rather the exterior execution than the whole action. Therefore, although, as the Code itself teaches in can. 2209 §3, one commanding or ordering is the principal author, apart from the executor or executors he is numbered among cooperators.

Cooperation is distinguished as formal and material. Formal cooperation is chiefly had when the intentions themselves are joined, or when concurrence is offered to the intention of the agent, or the matter is done and aided by common counsel. - Material cooperation is offered when one acts with a different intention, and another concurs. But that cooperation also is called formal which in itself, whether by its nature or by its necessary signification, contains goodness or malice of the same kind as the principal action. Others call this immediate material cooperation.

Therefore material cooperation in evil is done without the intention of the evil intended by the principal agent, through an action good in itself or indifferent, or at least wholly extraneous to the malice of the principal action which is considered: the principal agent himself then abuses your action for his depraved plans; he himself joins his evil will with your action. Cf. St. Alphonsus, l. 2, n. 63.

According to its distance from the principal action it is called proximate or remote.

II. On Cooperation in a Good Action

The Utility, Value, and Merit of Cooperation. — Alone we have power for few things. Therefore charity counsels prompt and manifold cooperation, both physical and moral, toward good, by counsel, exterior help, approval and praise, communication of knowledge, or furnishing of strength.

Aid of this kind, since it often prepares applause and success for others, frequently contains an exercise of humility and is very remote from envy. Therefore the same cooperation is commended by the very purity of affection. And it reaches the highest praise when the cooperator chooses labor for himself, and procures honor for another. On account of the communion of saints, all our prayers and good works can cooperate with all pious undertakings which are attempted everywhere on earth.

Formal or "intentional" cooperation communicates the merit of the principal action; not so material cooperation, unless it is conscious and, as cooperation, approved or intended.

— Superiors of religious institutes are accustomed to admit friends and benefactors to the society of merits and good works. Those who are given that communication are now ascribed among those for whom not a few sacrifices and suffrages are offered in the religious institute, whether from the appointment of the Superiors or from the spontaneous prayers which religious are accustomed to pour out according to the mind of the Superiors; and besides, as joined in a special way with the

religious institute, in a mode analogous to that by which those themselves who are enrolled in the institute are joined, they can thence expect for themselves manifold supernatural help and divine mercy. Cf. concerning this matter St. Thomas, in 1 Sent., d. 45, q. 2, art. 1; Tamburini Ascan., *De iure abbatum*, t. 2, d. 9, quaesit. 3; Bucceroni, *Theol. mor.*, tom. IV, p. 428, *Altera affiliatio*, where he treats this argument more fully.

III. On Cooperation in an Evil Action

— 1. Strictly formal cooperation necessarily participates in the malice of the principal action. Therefore, if this is intrinsically evil, the cooperation itself never becomes lawful. The same must be said of formal cooperation which others call immediate material cooperation, if you except only injustice in material goods. For, on account of the right of necessity, it is sometimes lawful to cooperate materially, even immediately, in such injustice.

2. Material cooperation itself is per se illicit. For with respect to the agent it is opposed to the office of fraternal correction, by which we ought from charity to impede or correct his evil action; and often besides another effect is connected with it, derogating from the honor of God, or harmful or damaging to others.

Thence a not small question arises, whether material cooperation, when it is illicit, wounds the virtue of charity alone, or also the diverse other virtues to which, according to the diversity of the case, the principal action is opposed. Cardinal d'Annibale, I, n. 174, judged that charity alone is wounded, unless besides you bear a special office of parent, judge, minister of the sacraments, which imposes upon you the opposite care, because the material cooperator effects nothing evil in itself. Sanchez thinks otherwise, *Decal.*, l. 1, c. 7, nn. 10, 12; but he says this consistently with his opinion concerning the malice of indirect scandal, which we rejected. Others (cf. concerning prop. 51 of Innocent XI, Cardenas, diss. 31, nn. 10, 11) hold the same conclusion, because cooperation, joined with the principal action, participates in this action's malice. But this must be denied, since the connection is not intrinsic but extrinsic, from the evil will of another. And, if this reason were admitted, the cooperation itself would become intrinsically evil, so that it would never be excused: which is very commonly rejected. There are those who distinguish injustice from other sins, because then, besides the reason of impeding from charity the sin of the agent, "there is present the reason of impeding the damage of a third party who has a right that another should not concur to his damage." Thus Ballerini-Palmieri, t. 2, tr. 5, n. 297. But Cardinal d'Annibale objects, l. c., why should justice bind more than the other virtues? There are not lacking those who, concerned only about the gravity of the sin, omit the question of species, although other virtues oblige in one way, charity alone in another; or those who propose the matter very briefly and rather confusedly. Thus Lehmkuhl, I, 786, has these few words: "the wounding of charity is not the only, indeed often not even the principal, reason why some cooperation is illicit." Yet by these words, with the common opinion, he dissents from the view of d'Annibale.

We think it must be said briefly thus. The only cooperation which comes here to be considered is that which is positive, or by action. This alone truly concurs. Negative cooperation merely does not impede. Therefore, unless you have a different obligation from office, this can wound charity alone.

Positive material cooperation itself is no more than scandal a per se cause of the evil thing. Yet this difference exists between scandal and this cooperation: from no physical operation of the scandalous person, as such, does the effect depend; whereas, apart indeed from the intention of the one operating, his causality is assumed for an evil effecting, which is thus actively permitted. But various virtues impose upon us an unequal positive care, lest our action, even unwillingly on our part, harm their cause or good. Therefore material cooperation is not forbidden by a negative precept of the virtue, because one cooperating materially in truth does nothing contrary to the virtue himself (and thus the second opinion is rejected); but it can be forbidden by a positive office, insofar as the cooperator has wrongly permitted an efficacy opposed to various virtues. And this seems to have escaped Cardinal d'Annibale.

3. Material cooperation is not intrinsically illicit, but becomes lawful insofar as it is joined with sufficient care of virtue. The same thing is said in other words: material cooperation is excused by a proportionate inconvenience.

Principles Concerning Lawful and Unlawful Material Cooperation. — 1. Insofar as cooperation is forbidden by charity, the rules handed down above concerning indirect scandal recur. Insofar as it is forbidden also by another virtue to which the principal action is opposed, the very proximity of the cooperation to be avoided creates a formally graver obligation, and the rigor of that virtue also must be attended to.

2. Furthermore, this formula can be handed down. Material cooperation must be purged from affection toward the evil, from the vice of scandal, from a further evil effect. Therefore the cause excusing it ought to be such: a) that it can be joined with a mind wholly averse from the evil; b) that by an explanation of the cause scandal is removed, or because of the gravity of the cause scandal can be disregarded; c) that it compensates for the other damages which will follow from the cooperation.

Difficulty of Estimation. — The estimation of lawful and unlawful cooperation is impeded by difficulty: a) of considering adequately the matter with its circumstances. Now, if the business were completed between only the agent and the cooperator, the scandal which is often mixed with cooperation complicates the solutions. Thus Titius indeed wishes to read a bad work, but at the same time to preserve faith. If you foresee that from the reading he will lose the faith, by cooperating with the reading you give scandal of lost faith. - But the execution of an evil thing easily brings further effects damaging to religion, virtue, other persons, and society itself; b) of distinguishing an action intrinsically or always illicit from an action which in certain circumstances can be made honest. Now in that estimation writers do not agree, although per se it does not seem too arduous; c) of distinguishing the reasons of scandal and cooperation which occur in the case.

But the difficulty increases: a) because many writers propose the principles confusedly; b) because they do not agree concerning the reason why cooperation is illicit; c) because not a few circumstances have changed since the classic authors contemplated the various cases of cooperation, whose authority nevertheless is so great that modern authors retreat with difficulty from their literal responses.

The Prudent Mode of Examining a Case. — a) First of all it must be defined accurately what, in the proposed case, is intrinsically illicit.

b) Then the various respects of the proposed case must be considered: the respect of the proper danger to which the cooperator is exposed in the cooperation itself, and of the damage which is to be feared from denied cooperation; - with respect to the principal agent, the connection between him and the cooperator, the damage which seems about to accrue to him in relation to the common character of sin; - the respect of others who will suffer either scandal from the cooperation, or damage from the action to which cooperation is given; - the respect of the virtue to which the principal action will be at least materially contrary: this consideration can reveal a direct obligation of positively impeding the principal action; - the respect of the action which preceded and of the action or effect which follows: thus one who sells a bad sheet helps the publisher and harms the readers.

c) These things having been considered, as by a simple intuition you should see whether the cooperation appears to be a rational mode of acting, or the contrary. This intuition of a prudent man contains no small presumption of truth.

d) If the importance of the matter requires it, the various parts of the case must be weighed separately.

e) That you may suitably add counsel to the response, you will examine the very utility sought from the cooperation. We shall not favor cooperation which brings merely temporal gain; we shall be easier if damage is to be avoided; if a nobler end is intended, with a more inclined mind we shall indulge the matter. For if the casuist inclines toward the more benign things, the spiritual director suggests the better things.

Helps for Right Estimation. — It is useful to recall these things which are generally admitted:

1. He who gives an occasion of sinning to a man prepared to sin, or whose will is already evil, does not thence gravely harm him. Lugo, *Iust. et Iur.*, d. 25, n. 235.
2. Per se, or with scandal excluded, remote cooperations which are not *removens prohibens*, i.e. which would be supplied by another, are excused from grave sin. Sanchez, *Decal.*, l. 1, c. 7, n. 16.
3. Every cooperation toward grave evil which either is proximate or, if remote, is *removens prohibens*, can be excused only by grave damage. If at the same time it is proximate and *removens prohibens*, or if there follows the gravest evil of one person, or the grave evil of several or many, cooperation is excused only by gravest damage.
4. For rescuing someone from extreme spiritual necessity, every damage must be borne, whereas damage of life or state or fortunes is not to be undergone for freeing neighbor from temporal necessity, even extreme.

Grave spiritual necessity imposes a grave inconvenience, at least on those who have a positive office of caring for the good, or unless the necessity has been general; then damage of life itself must be undergone. Cf. n. 99.

For avoiding formal sin for someone, grave inconvenience is not to be suffered.

5. But we are forbidden more severely lest we cause such evil. Wherefore it happens that of the same evil from which you ought not to free neighbor with grave detriment, you cannot be a positive and proximate cause,[^017-1] even by accident,[^017-2] unless you are excused by morally extreme damage of your own.
6. Causes excusing cooperation are distinguished as very slight, light but reasonable, rather grave, grave, very grave, and gravest. It is useful to declare these by examples.

A very slight excuse is brought by ordinary profit: this scarcely ever suffices.

A light but reasonable excuse is brought by service, the condition of a subject: it is always considered damaging that you should have to deny what seems to pertain to an office. - Extraordinary profit also induces such a reason, as does the inconvenience of not selling one's goods equally well.

A rather grave excuse is sought from fear of losing good service, a good client, indeed notable profit, if there is question of a man of slender fortune.

A grave excuse is present in the true difficulty of finding another service, another office; - in lack of things, whether this present lack is to be removed, or a future one is feared; - in infamy before one discreet man; - in secret expulsion from a college; - in the desertion of several clients; - indeed in great indignation of a husband, father, or master.

A very grave excuse is shown by the loss of state or civil condition; by defamation before several; - by notorious expulsion from a college; - by the danger of falling notably from one's state.

A gravest excuse is had when a good equivalent to life is placed in danger.

And observe in general that a graver excuse proceeds from positive damage than from cessation of profit.

But when, to excuse a servant, they demand a reason which is added to service, the servant ought to decline that cooperation by seeking another service, unless the very loss of such service induces sufficient inconvenience.

— You will ask whether or not you can cast illicit cooperation upon another already prepared: as if a magistrate or soldier should ask others to indicate causes or execute things which, conscience forbidding, cannot be indicated or done by you?

It is not lawful to ask illicit things. Therefore a Catholic magistrate or soldier cannot formally and honestly ask from another an action illicit in itself and illicit for the other. But no one is forbidden simply to refuse his own cooperation, to ask from him who distributes causes or commanded actions that these things not be imposed on him to be indicated or done. Nor does the foreseen substitution of another stand in the way. He who refuses his own action merely permits that future substitution. Therefore it is not repugnant that in an unbelieving region Christian servants pay money to the master of works, lest they be compelled to perform or participate in superstitious things. Lehmkuhl, I, 820; Noldin, *Praec.*, 122.

IV. Corollaries or Applications

It is very useful, by reading approved authors, to acquire for oneself a right judgment, so that afterwards you can more easily apply the principles to various cases, by weighing the connection with

sin and the character of this sin, the fruit of refused cooperation, and the damage to be sustained.

Wherefore we adduce various examples, warning at the same time that there is not one opinion concerning all.

A. Cases Which Are Drawn from the Very Condition of Men

— A parish priest, minister of a sacrament, confessor, lest they violate secrecy, lest they make someone infamous, etc., not rarely must, in the public or even private administration of a sacrament, cooperate in sacrilege. Just as a bride lawfully cooperates in the same when she contracts marriage with a bridegroom living in the state of mortal sin.

Cooperation of Religious Sisters in Clinical Hospitals. — Since today there easily occur physicians and surgeons who, in exercising their art, in a conscious or unconscious manner sin against the natural divine law, as it is declared by the Holy See, a question of grave moment arises concerning the cooperation of Sisters. The chief cases are: the administration of morphine, not for alleviating present pain, but for procuring alienation of mind in the agony of death; then the direct procurement of abortion and feticide.

Furthermore, hospitals to which Sisters are assigned are of three kinds: some are public; others are private hospitals of physicians; others belong to the Sisters themselves.

In no hospital, as is clear, can Sisters formally cooperate in an illicit action; but material cooperation can be excused less with difficulty in public hospitals than in private ones. For it pertains to the common good of religion and to the salvation of very many souls that Sisters rather than lay women minister to the sick in public hospitals. Wherefore, with the exception of formal cooperation or the execution of the illicit operation itself, such as an infusion of morphine certainly illicit, which they must wholly refuse, material cooperation, even that of cleaning and arranging the instruments, washing and preparing the body for the operation, and the transfer of the sick person to the place of operation, will not be able to be condemned, with scandal excluded, which will be removed rather conveniently, for example by a declaration.

But if there is question of the private hospital of a physician, first, before they promise their own labor and that of the Sisters, the Superiors must take cautions, lest anything against the conscience of the Sisters ever be asked; and every cooperation, even material, must be denied, unless perhaps very remote, as is the very reception of a person laboring under an evil into a room adorned by the Sisters.

Finally, if the ownership of the hospital belongs to the Sisters themselves, they must take care in the contract with the physician lest any physician be called or admitted who attempts anything illicit. And only in an extraordinary, unforeseen case will there be room for tolerating the action of the physician, illicit in itself, and for cooperating materially, in order to avoid worse evils.

Finally, in doubt, when the act is invincible, the Sisters can in any hospital permit the matter to the conscience of the physician, otherwise upright. If, however, a firm presumption cannot be drawn from the very religion of the physician, concerning a case which is foreseen to be going to occur several times, afterwards they will have to procure fuller security for themselves.

Concerning the difficulty which the false worship of a non-Catholic sick person can bring, cf. below, 147, 6 and 7.

— In what way a spouse can or even ought to have carnal commerce with an onanist spouse, or one who is bound by a vow, is explained in the tract *On Chastity and the Opposite Vices*. Cf. nn. 255, 265-268.

A Servant. — 1. On account of the reason of service alone he can per se render services which are accustomed to be demanded from servants and concur remotely in sin: for example, to dress the master, to saddle a horse, to open the door for a concubine and prepare her bed, to set wine before a master making himself drunk, to prepare meats on a forbidden day, to buy a liberal newspaper or a book not so obscene, etc.; indeed even to accompany the master or convey him by carriage to the house of a mistress, or to carry letters which he suspects to be amatory. For it would be intolerable that, while he performs these customary offices, the servant should carry out a censorious inquiry concerning the end, or should look to the master's intentions. Yet for permitting the later actions (those enumerated after the word "indeed") many require that a reason of notable damage be added, which will scarcely be absent. All require this reason that he may lead the prostitute herself to the master.

N. B. Public drivers, since without very grave inconvenience they cannot publicly refuse an office to one asking, nor are they accustomed to be solicitous concerning the reason of the journey, can render these things more easily. Certainly they will be praised who industriously avoid these things.

Yet we think that a stricter answer must be given concerning those who, beyond the boundaries of a region in which a duel is forbidden, convey those who ask for the journey with a manifest intention of duel. Not every cause then seems sufficient.

2. Another proportionately grave cause is required besides, that a servant may be able to render to a master inviting or ordering him those things which approach more nearly to sin, as for example, to put his shoulders under, to move ladders near, for the master climbing through a window to a concubine; to carry letters certainly amatory to a prostitute; to accompany to a duel; to write, at the dictation of the master, letters which indeed contain only signs of civility but are foreseen to be going to increase base love; to buy an image not so base that it is properly obscene, or not such that it can serve for nothing except lust.
3. A gravest cause is required when an action is demanded which at the same time approaches more nearly to sin and will effect grave damage to an innocent person, or which contains proximate cooperation: for example, to put his shoulders under a master climbing up to violate a virgin; to keep watch to defend the master if perhaps, while he is with a mistress, arriving rivals attack him (Sanchez, l. 1, c. 7, n. 23); to carry letters which certainly contain a base invitation, etc.
4. For no cause would it be lawful both to write and to carry letters containing base things or a base invitation, or to invite a person in the name of another to meet for the sake of sin, with the depraved end indicated. With the depraved end kept silent, cooperation by invitation can be excused by a gravest cause.

Therefore it is not lawful for those Black servants, who are commonly called "boys," to obey Europeans who order them to seek a concubine for them from among Black women.

According to the things said in n. 3, if in that meeting a girl is to be deceived, fear of death alone would excuse from the invitation; or the girl would have to be notified that snares have been laid for her.

— A judge or magistrate does not merely declare an existing law, but, as a Superior, authentically intimates it to the parties, so that by sentences passed the law is practically confirmed and received into morals. Yet he does not command of his own accord, but ordered by the law, compelled by office, and as it were the legislator's mandatory. It is besides of the highest interest that Catholic and upright judges can remain in office. Therefore the cooperation of a judge with an unjust law, which cannot be declined except by resignation of office, is demanded by a grave reason of the common good. The object and circumstances of the cooperation must now be considered.

With voluntary cooperation excluded, which, as quasi-formal, cannot be excused, a judge can never directly command things which are intrinsically illicit: for example, incense to be offered to an idol, cohabitation with an illegitimate spouse. But if there is question of a penalty to be imposed, and the same is not grave, the solution seems to be sought from the consideration of the prevailing public good. As long as one must strive in every way against a law, whether because it is openly impious, or because it is recent, or if this is the manifest will of the Superiors of the Church who define or declare moral obligations, office will rather have to be yielded than that it would be lawful to offer cooperation of this kind to the unjust law; on the contrary, scandal having been removed and hope of accomplishing something having been taken away, the innocent person to be fined is not judged reasonably unwilling that he be condemned to pay a moderate sum of money. Moreover, it is sometimes lawful to cooperate immediately in unjust damage in goods which one can licitly renounce; and the public utility of preserving good judges can make this renunciation of his right necessary for the innocent person from charity. Thus, for example, in Belgium the case seems to be that of a judge who imposes a fine on a priest who has imparted the nuptial blessing before the civil marriage ceremony. Lehmkuhl indeed, I, 962, raises this grave difficulty, that to affect an innocent person with a penalty, to declare him worthy of penalty, is intrinsically evil. But Noldin, *De praeceptis*, n. 726, thinks that this malice can be removed by the consent of the innocent person. We think that the distinction must be made thus: - that condemnation harms the innocent person and contains per se a disapproval of the action. Insofar as it harms, if there is question of those goods which can be directly taken away on account of public utility, the sentence is not intrinsically evil. But the note of disapproval can be removed by common interpretation, so that it is known merely to be a literal application of the law, which must be tolerated to avoid greater evils. And then nothing intrinsically evil is now shown in that sentence.

If the law is unjust for this reason, that it contains usurpation of the ecclesiastical forum, in certain regions custom itself has removed at least the positive sanctions of that immunity, as was declared by the Cardinal Secretary of State in the year 1911. Cf. *Periodica*, t. 6, p. 190. Therefore regard must then be had to the natural obligation of consulting for the honor of the Church. And, in a graver or unusual case, a license or declaration sought from the Ordinary or, through the Ordinary, from the Holy See, will make the magistrate more certain concerning his office. In this matter civil causes and criminal causes of minor clerics must be distinguished from criminal causes of Bishops. Concerning the former, either Concordats or custom in several regions indicate what must be done; elsewhere

the license to be requested will not be denied. Concerning the latter causes, as graver, the matter will have to be arranged mediately or immediately with the Holy See.

Nor, by applying the law of divorce, does a judge command anything intrinsically dishonorable, but he removes civil protection from marriage and concedes to the parties the faculty of a new civil marriage. In this matter nothing intrinsically dishonorable is discerned, but something which, according to the circumstances, will either be scandalous and to be inhibited, or to be tolerated. And the responses of the Holy See have varied according to time and place. Cf. the writings on chastity, n. 286.

While concerning the application of an unjust law Lehmkuhl, I, 962, speaks more severely than Bucceroni, *Theol. mor.*, nn. 19, 20, the former, II, 921 note, solves more benignly than the latter, l. c., the case of one pronouncing divorce.

— In speaking about judges, we have already spoken about jurors, whose case is similar, except that these can more easily, by denying condemnation, impede a sentence against the rights of the Church. Yet it is not per se expedient that a convicted accused person be absolved. Therefore it will be more satisfactory that, where there is need, after the faculty has been sought, they answer according to the things alleged and proved. Nor is it per se to be advised that Catholic jurors refuse that office, since there is danger lest ministers of the Church be judged by enemies.

N. B. Jurors, according to their conscience, pronounce merely concerning guilt, by responding affirmatively or negatively to the questions proposed by the president of the court.

Innkeepers. — 1. They cannot favor the violation of the laws of the Church or render them difficult to observe; yet they themselves, again, because Catholics and non-Catholics, the pious and impious, the healthy and the weaker are mixed, today experience great difficulty in serving on days of abstinence foods forbidden by law to those alone for whom they would be permitted to prepare them. Thence there are not lacking regions where a general dispensation of the law has been conceded in lodging houses and inns. And, except in places plainly Catholic, where the offering of forbidden food would be scandalous, today innkeepers will satisfy their office if they supply clients every convenience for observing the law, and do not by various pretexts or even by a lesser quality of foods increase the reasons why clients may decline the observance of ecclesiastical discipline as too grave. It is never lawful to supply meats requested in contempt of religion.

2. Dances are the occasion of many sins. Therefore those innkeepers cannot be excused who introduce them or alone retain them. Those who merely, according to received custom, furnish a place for dances, otherwise not dishonorable, are not to be blamed, at least gravely. But that there should be held there dances of that more recent kind, which even among persons select by their condition are to be criticized not lightly, can in no way be tolerated either by a pastor of souls or by a confessor.

3. They are forbidden to buy newspapers wholly opposed to faith and morals, or obscene ones, even if they are deserted by many clients. On the contrary, they must take care that good newspapers be ready for those same clients. Concerning other newspapers, they should strive to give the least occasion of reading things which are less becoming, whether you regard faith or morals; let them lessen the evil which they cannot extinguish.

They themselves do not draw clients by less good newspapers, which would be unlawful; but they impede being deserted by clients. Therefore this can be lawful.

4. They can never furnish a place for sinning to those asking in such a way that they seem to consent to the sin. Indeed, a notable necessity, which alone would excuse, is for the most part not present. Lodging houses which admit persons of this kind are often marked by a certain infamy, whereas others from which they are severely excluded are commended by that very good name. Yet it is clear that inquiries are not to be made concerning persons who present themselves as spouses.

— Artisans cannot spontaneously make things which, whether in themselves or with attention to the region where they are made, have no use except a depraved one: images wholly base and without scientific use, abortive drugs, "condoms" in our region, idols in an idolatrous region. For a general and spontaneous making of this kind contains manifest favor offered without necessity to an evil thing, so that it must be marked with the note of formal cooperation. - But what if you make them under compulsion? Here the things and the makers must be distinguished. The very making of certain things can scarcely be had without sin: for example, a truly obscene painting or photograph; to perform these things will never be lawful unless perhaps to avoid a gravest evil. The making of other things is indifferent in itself, but their use will be evil. For example, instruments of the neo-Malthusian art, and the idol itself. The kind of evil must be attended to. Since idolatry is gravely injurious to God, to offer work in making or adorning a statue which is destined for idolatry will for the most part not be lawful, and cooperation of this kind can be made honest only from a gravest cause. Cf. Noldin, II, 123, c.

As to condoms, in certain regions, as they report, these same things serve for children's games; and in moderate quantity, just like abortive drugs themselves, they should be ready for men who study the medical sciences. Again, the cooperation of a hired worker in a workshop is remote, and he ought not to be solicitous concerning the special destination of the things. Therefore, if only a few are to be made, a worker who is prohibited from seeking an explanation will be able to cooperate, lest otherwise he be dismissed from the workshop. But if a great quantity of these things must be prepared in our regions, so grave a common evil is propagated through them that a worker who cannot otherwise refuse his cooperation must under grave obligation seek another master, nor can he remain in that workshop except for a short time. - In a typography, individual workers can and must be solicitous only concerning the kind of printing establishment; nor, where a better occasion is lacking, are they forbidden to hire out their work where, although obscene or truly impious works are not published, they have books to be printed, some good, others less good.

Even insufficient garments can always be completed by those wearing them. Therefore the work of an individual worker can be admitted with less difficulty.

2. Managers or masters of a workshop, since they preside over many things to be made and care for the diffusion itself of the things made, can never administer the making of things which can scarcely have an innocent use. For they would be the cause of many sins which otherwise would not be committed.

Yet here also attention must be paid to the varied nature of the things.

Books or newspapers which are not given over to obscene matters are accustomed, besides their less approvable parts, to contain things innocent and useful. Therefore they are not to be put among things whose good use is almost none. Therefore, when there is not question of an obscene or truly impious book, a hired manager, on account of a grave cause, for example if otherwise he would be deprived of a sufficient amount of works, is permitted to print a less good work, unless, because he is known as very Catholic, his cooperation would be scandalous. Yet he will not be able formally to publish such a book, since the publisher must care for its diffusion, so that his cooperation must be held as formal.

Those who by their own device invent and make dishonorable or less honorable women's garments cannot be excused from grave sin. On the contrary, a moderate or grave cause will excuse those who adorn such garments when asked: a moderate cause will suffice if the garments are a little freer; a graver cause will be required if they have been notably dishonorable. But today the conscience of managers who equip their large shops with no other ready-made garments except less honorable ones is burdened more gravely. For since they are sold at a lower price than garments adorned according to the desire of the client, they are bought by women of more obscure place, so that the less modest clothing of plebeian women and girls must be imputed at least in part to those managers.

A moderate cause seems sufficient, with scandal excluded, that you make garments, not strictly sacred, for a heretical or schismatic minister, by which his usurped dignity is recognized, as if you prepare the violet habit of bishops for a Jansenist bishop.

To avoid a necessity quasi-extreme, Lehmkuhl, I, 815, permits that emblems of Freemasons or of a condemned sect be made, because they do not contain superstition in themselves and are directed only by sectarians to depraved ends. And a very grave excuse seems to us sufficient, with special scandal from the quality of the maker excluded.

He exercises no superstition who, in preparing foods, avoids those things from which others think one must superstitiously abstain. Therefore it is lawful to consent to one asking these things for a very slight cause. And he who spontaneously announces that chocolate made by him is pure from elements which Jews do not want mixed in, today will seem to all to wish to gain profit, not to approve the Jewish sect. Therefore a moderate cause, for example a notable increase of profit, will excuse that cooperation. (Yet it is necessary that the rite itself be decorated with no honorary title.)

— A merchant holds a middle place between the maker and the user. His cooperation is more proximate; besides, one who proposes things for sale (at least spontaneously) seems to recommend them and is stimulated by the very zeal of profit to seek buyers. Therefore his cooperation approaches more to formal cooperation and is spiritually dangerous to him. But again the merchant presupposes the maker, so that the thing-making person sometimes, by his action, brings forth a necessity to which the merchant conforms while he has those things for sale.

Thence writers speak in a similar way concerning artisans and merchants, yet so that they estimate the cooperation of merchants a little more benignly. Hence the following norms are established:

1. Morally it is never lawful to sell things which have no use except a depraved one. Yet they excuse him who, in a special case, compelled by the gravest necessity of avoiding death, has done it.

2. Things which are subject to immense danger of abuse regularly cannot be sold unless the future good use is morally certain. Thus most poisons, excepting however those which, because they have a frequent good use, are now accustomed to be offered to all.
3. Things indifferent are sold without fault, which many use well although very many abuse them: dice, cosmetics, swords, guns, alcohol, as long as the intention of abuse is not certain. For the order to sin is remote; and those businesses cannot be impeded.

But if the abuse is morally certain, a proportionately grave reason, to be estimated from the principles prudently considered, must be added. Hence if the abuse is toward idolatrous worship, a very urgent cause is demanded; a graver one is likewise required if an innocent person is going to suffer unjust damage; indeed proximate cooperation which at the same time is necessary to the effect is excused only by a gravest cause. Therefore you could not sell a sword to one going to kill a man unless to avoid an evil equivalent to death. Cf. St. Alphonsus, l. 3, n. 571, where he corrects what he had written more severely in l. 2, n. 66.

Is it lawful, absolutely or without condition, to sell good merchandise, for example pure wine, to another who afterwards, under his own name, will sell it adulterated? St. Alphonsus, l. 2, n. 69, does not permit this except on account of fear of death or infamy; others, for example Lehmkuhl, I, 832, require a grave cause, while others, better, are content with a moderate one. The cooperation of the seller is very remote; there is no public scandal; and the cooperation is refused in vain. Indeed, from usage, from diminished price, etc., often the very injustice of the one adulterating will be doubtful. Yet a gravest cause will be required if the adulteration has been harmful and consequently notably damaging to the public good.

Concerning selling women's garments or ornaments that are not very modest, the things said about making them recur, n. 145.

There is a special difficulty concerning books and newspapers. Catholic booksellers are given the faculty that they procure prohibited books for selected persons who are helped in studies or profession by them. But it is not lawful for the same booksellers to have those books promiscuously for sale.

Concerning newspapers these things are to be observed especially: a) The spontaneous sale of newspapers which are opposed to faith or morals brings proximate cooperation to not a few sins. Therefore, even when formal recommendation is avoided, this cannot be tolerated except on account of the gravest cause of poverty and for a short time; b) far less grave is the cooperation of him who, with obscene and very impious newspapers excluded, has newspapers of various kinds for sale. His work can be indirectly useful, if he recommends or displays the less Christian newspapers less than another who would sell such in his place. Therefore, with scandal removed, this in certain circumstances could simply be permitted; c) it sometimes happens that from the public or general administration there is bought the right or monopoly of selling newspapers in "stations" of railways or streets, on this law, that newspapers of all political parties be sold equally. This sale-distribution of newspapers can be compared with the distribution of all letters, newspapers, and books which is done through postal offices. Therefore nothing prevents a Catholic man or Catholic society from acquiring such a right for itself. No scandal of connivance with evil will be given; and indirectly there will be an occasion of impeding not a few evils.

[^017-1]: Insofar as we can be the cause of another's sin.

[^017-2]: By accident, i.e. apart from intention.

B. - Cases Concerning Various Objects

Cooperation Toward False Worship. Present circumstances warn us that the danger of a certain indifferentism must be carefully removed, which honors or neglects various religions in almost an equal way; yet at the same time, indeed more, irreligion must be fought, which surely is worse and more false than erroneous worship. Besides, in most places at least, the profession of false worship offends Catholic worship less directly than formerly. Finally, in our mixed societies, material cooperation is judged less to be a favor furnished to a false sect.

1. Therefore this general rule can be established concerning that cooperation: that, with a positive prohibition of law excluded, it is rather easily called lawful when it savors of no indifferentism, but can be joined with aversion from the false sect, creates no danger for the cooperator, and scandal is absent or is excused by grave inconvenience.
2. To give one's work in constructing a non-Catholic temple, whether pagan, Mohammedan, Jewish, or heretical, will never be lawful if it is sought in contempt of the Catholic religion, or if it is held as a kind of protestative sign of false worship. In this way the most severe decrees given by the authority of the Holy Office, by the S. C. of the Propagation of the Faith, e.g. January 8, 1851, concerning cooperation in building temples of idols, must be explained. Cf. Ball.-Palm., t. 2, tr. 5, n. 300. Although a graver necessity must be present for you to be excused from cooperation toward a pagan temple than toward the very "mosque," on account of the greater distance from true worship.

But hired simple workers can, from their very condition, cooperate in constructing a temple which, permitted by law, is erected with no offense to the Catholic religion. But contractors for works (*entrepreneurs, appellatori, intraprenditori*), insofar as they merely execute the model of the architect, will be excused with more difficulty than workers, more easily than architects. Where a different custom has not already prevailed, on account of merely sufficiently grave damage the contractor for the work seems able to be excused: the scandal of indifferentism stands in the way. But a wholly grave damage must be required for you to excuse the architect: for he adds splendor, and thus favors false worship. Yet I would answer more mildly if he rather seems, against irreligion, to favor divine worship under a common aspect. Nevertheless one must guard against the scandal of indifferentism.

Because the constructions of heretical temples in the City were judged especially scandalous, the Instruction of the Cardinal Vicar of June 12, 1878, declared architects, contractors, masters of workers, "who undertake care and work for constructing and adorning some Protestant temple," guilty of mortal sin.

3. To contribute money for the building of a temple is not intrinsically illicit, because the building itself is not yet the exercise of false worship, nor does the contribution necessarily contain approval of error. Yet if it immediately helps the very plan of building a temple, as Noldin says, *Praec.* n. 122, "in itself it contains external consent with the depraved intention of heretics or unbelievers, and an external favor furnished to heresy or idolatry." Yet that note can be

removed either by protestation or by the circumstances themselves, as if Catholics can in this way free themselves from the simultaneity - scandalous in itself - by which they are forced to have one church in common with heterodox persons. Cf. N. Paeii. 1822. With circumstances of this kind excluded, it is better to avoid this as much as opportunity is had, and rather to offer money to a lodging-house or to a profane good of Protestants. Where the contribution cannot be avoided, it will be excused by grave inconvenience, if by common interpretation no favor is judged to be given to heretical worship, but benevolence merely has been signified.

Thus also it is tolerated that Catholic deputies approve subsidies which customarily are paid from the treasury to various sects: they grant these not to non-Catholics as such, but to fellow-citizens, and for avoiding grave damage to the Catholic religion. Lehmk. I, 818.

4. To sell indifferent furniture for adorning a non-Catholic temple (benches, seats, a table, lamps) is so remote a cooperation that the excuse of profit to be received therefrom suffices. A graver cause is required for things of this kind to be made expressly for that temple, because these help the formal exercise of worship; and the more immediately they serve a non-Catholic rite, the graver cause is required. Cf. Noldin, *Praec.* n. 122. Today nevertheless they permit that simply, on account of the profit to be received from it, a lamb to be sacrificed be sold to Jews: that cooperation is very remote [1]. But a grave cause is required so that sacred vestments can be sold to them, and scarcely except for averting gravest damages will it have been lawful to sell sacred vestments which contain superstitious signs. But simply it will be lawful to sell our liturgical books for a price to non-Catholics who use them, since these at the same time commend our faith.
5. To ring a bell is not to exercise a rite, but it is either formally to invite to a sacred ceremony or to give a sign of a future ceremony. Where, from the circumstances, it seems to be an invitation, this is intrinsically illicit; but if, as per se it is to be understood, it is held for a mere announcement, this material but rather proximate cooperation will be lawful from a very grave cause. Lehmk. I, 812; Noldin, *Praec.* 120. That for a profane solemnity, e.g. as a sign of joy for the victory of the fatherland, Catholic and non-Catholic bells should be rung together even by agreement, nothing prevents; but lest the scandal of indifferentism be given, it is not to be approved that at an appointed hour all should be rung for this end, so that they give to the faithful and to non-Catholics at the same time the sign of a sacred function. Cf. Lehmk. I, 812.
6. To prepare things necessary for exercising a superstitious or non-Catholic rite, e.g. to spread a table and place there the things which come into use for the minister in assisting the sick person, is to exercise proximate cooperation, material however, which will be excused by a grave cause. But ambiguity of intention, if any is present, must be removed by protestation. Cf. Lehmk. I, 811.
7. Formally to invite a non-Catholic minister to exercise his ministry with a dying person is formally to ask from him an illicit action, which is unlawful. Cf. S. Off. March 15, 1848, apud Lehmk. I, 810. Merely to warn him that there is a sick person of his sect there is only to furnish material cooperation, which will be lawful from a cause wholly grave. Lay persons set over prisons or hospitals, for example, will be able to do this. With attention to their quality, let Sisters not do this of themselves per se.

8. To play the organ for ritual chant seems hardly not to be formal cooperation. Wherefore only from very grave necessity can that proximate cooperation be admitted. But one who, in a certain concert, is compelled to perform his musical part on some instrument will be excused a little more easily. And the case is different of a concert which, on account of a profane reason, e.g. for honoring a prince, celebrating a victory, is set during a sacred function. In circumstances of this kind this commonly will be lawful per se.

9. That in the heretical temple itself Catholics assisting together with non-Catholics should sing a sacred canticle of thanksgiving, e.g. the *Te Deum*, as a sign of common joy rather than for carrying out a sacred function, this does not seem lawful except to avoid scandal: lest they seem destitute of patriotic affection. If it is rather considered as a sacred thing, one must abstain more from that communication, which nevertheless is not yet intrinsically illicit. Wherefore care must be taken, as much as opportunity is given, that demonstrations of this kind be made separately by Catholics and by non-Catholics.

10. When a heretical minister recites prayers before or after the table, it will be unlawful to respond to him if he recites them as a heretical minister. If as an elderly man devoted to sacred things, where custom was to entrust this to the elder, the thing does not seem to be prohibited, since no authority is then added to him as minister. If custom is lacking, let us reverently abstain.

On English ships, the captain, from office, must on Sunday recite in common prayers taken from the book called the "Prayer Book." Provided that he chooses prayers free from error, a Catholic captain seems able to fulfill those parts. His action is explained by the office to which he is bound, and a religious demonstration today is rather to be desired.

11. If in a non-Catholic region an oath must be taken by touching sacred Bibles edited or translated by heretics, and there is no opportunity of using a Catholic edition, the thing does not seem illicit, since per se it is manifest that these are used only insofar as they contain the word of God, but not insofar as they are not perfectly conformed to the Catholic edition. If it can be done, this mind should be declared. Cf. Lehmk. I, 552 note. - Concerning cooperation toward false worship, Sanchez, *Dec.*, l. 2, c. 9, n. 7; Laymann, l. 2, tr. 3, c. 13; Lugo, *De Fide*, d. 14, s. 5; d. 22, s. 1, nn. 10, 11; Lehmk. I, 800-823; Noldin, *Praec.* 122, are read usefully.

[1] But the cases are sufficiently different of a lay man who sells to Jews some lamb from among lambs which are offered for sale in various places, and of an ecclesiastical man who sells to a schismatic priest flour expressly requested for making hosts for Mass, and which no one else can sell. A very grave cause, especially of public order, alone seems able to excuse that cooperation.

— Concerning the construction of buildings of Freemasons, the things said concerning temples apply. They are connected more remotely with the evil use than the sacred buildings of heretics. Cf. Lehmk. I, 816. Yet again the sect is usually more actually hostile to the Catholic faith and religion than a non-Catholic sect, especially an ancient one. Wherefore it is worse to favor their impiety than the false piety of these latter.

The same must be said of favor furnished to societies of socialists, such as they are commonly known. Therefore to procure money for these, so that they can have buildings proper to themselves,

cannot be excused from objectively grave guilt.

Yet it is not intrinsically illicit, but on account of a proportionate cause it will be lawful to contribute money to a society of socialists whose immediate end is honorable. Noldin, *Praec.* 122.

Cooperation Toward Political Parties in Public Life. — Briefly, on this occasion, we shall speak about the office of those who participate in political rights. Charity and piety toward the fatherland oblige citizens, as much as it is of interest to the republic, to exercise their political rights. Wherefore:

I. Concerning the right of suffrage. Since the obligation of casting a vote is not from an office undertaken, the sin of one omitting a vote will never be opposed to commutative justice. Yet a damaging omission, or one depriving of a great good, or a scandalous example of indifference, will be sins whose gravity must be measured from the probability or gravity of the damage, compared with the inconveniences of casting a vote.

Practically: a) Where an upright and pious candidate is opposed to a depraved one, to abstain from voting without cause does not seem, in present circumstances, regularly able to be excused from venial sin. Where from the omitted vote the fortunes of the election are not foreseen to be changed, to abstain from voting will not be grave of itself. If grave private damage of fortunes, health, etc., is seriously feared from the vote given, the positive grave obligation of concurring will be most rare.

b) To concur by a positive vote in electing an unworthy man as such, or from a bad intention, is opposed to commutative justice itself, since society has a strict right not to be ruled by the unworthy. With this intention excluded, it will be grave if the vote seems to have notable influence toward a rather proximate danger of grave evil. Yet the thing does not seem intrinsically illicit: all are elected so that they may administer the republic well. Wherefore a proportionately grave reason will be able to excuse someone from every sin, or at least from grave sin.

Therefore per se it is not lawful to give votes to a candidate who professes depraved principles. - Where there is no opportunity of choosing for another, it is right to give one's vote to him by whose election worse evils are removed, at least if the vote is usefully cast for this end. - But the signification of that vote ought to appear, either by open declaration, or from the fact that in the previous scrutiny you voted for an upright and Catholic man.

Citizens placed under a usurper, not in favor of him but for the common good, will not rarely have to use political rights.

II. Concerning Elected Deputies. a) They themselves have the public good to be procured from office. Wherefore, even by abstaining, they can violate commutative justice.

They cannot cooperate in a depraved law except insofar as it is less evil than that which otherwise would be proposed: for example, a law which, by sanctioning divorce, in part corrects a previous law concerning divorce. Scandal must be removed by a declaration.

b) One who alone seems capable is forbidden to decline public offices. Wherefore, "he who is suitable and is sought by common votes, unless he has a probable reason for desisting, is bound to acquiesce in the election, so long as the public good cannot otherwise be provided for." Ball.-Palm., *Opus theol.*, t. 4, tr. 9, n. 640, 7.

Concerning Shareholders of Societies. 1. It is unlawful to favor by money a society which pursues an illicit end, for example, publishing a depraved newspaper. Wherefore morally you can never have a part in a society of this kind to be constituted. But, with scandal and a depraved intention excluded, a proportionate cause will be able to be present for buying "shares" of a society already constituted. Indeed this can be a means of suppressing the evil. - But one who already possesses "shares," or titles, or has acquired them by inheritance, since their destruction or alienation profits nothing, seems able to keep them or even to sell them to another honorable and prudent man from whom abuse is not to be feared. Cf. writings by Ill. D. Waffelaert, *De Cooper. - Nouv. Rev. Theol.* t. 13, p. 366 sq., where several other cases are proposed.

2. But if the end is honorable or indifferent, but illicit means are sometimes employed, reasons can more easily be present why you may remain in societies of this kind, with the intention of removing the evils according to your powers.

For this reason workers also can be excused who cannot refuse their name to societies of "socialists" without grave, indeed without gravest inconveniences, especially if economic ends alone are expressly intended.

But money received is not to be restored, unless there has been damaging sin against commutative justice.

3. But to all shareholders of a society their offices must be strongly inculcated, lest they shrink from burdens while they desire to receive profit.

Furthermore, not rarely, in an industrial society, supreme power belongs to the general assembly of shareholders, to be convoked each year, and in which, by common votes, agents are elected who are called administrators, because they are judged to exercise the business itself. And shareholders have the faculty that they be represented in that assembly by another shareholder, or that they join their "shares" with others, if a definite number of "shares" is necessary for casting a vote. These things therefore being posited:

a) With respect to the society itself or the other associates, the right of shareholders is a privilege, which, with commutative justice at least unharmed, they can fail to use.

b) But they are held by a graver obligation with respect to outsiders and workers. For they ought to decree this, that the business be managed honorably for them. Wherefore administrators upright and honorable, who put care and labor into observing the moral laws, must be constituted by them; and every year they ought to inquire into the manner in which business has been conducted. Otherwise, according to the rules concerning cooperation toward injustice, foreseen evils of injustice will deservedly be imputed to them, which, by presenting themselves, they would have impeded. One who, whether by positive vote, by silence itself, or by absence from the meeting, has explicitly or implicitly approved unjust things, will be guilty of injury as one commanding.

Yet the solution is less obvious when, on account of other qualities, an administrator seems to be placed over the business who at the same time will commit injustices which cannot be impeded by any vote in the annual meeting. Those who elected such a one under another respect gave him an

honorable mandate, which he abuses; yet at the same time they conferred on him the faculty of abusing. This cooperation will be able to be excused by a proportionate cause.

Practically therefore, according to the grave or light efficacy which they have in these assemblies from the number of "shares," shareholders are held by a grave or light obligation of charity or justice that by themselves or by a suitable proxy they be present at the assemblies and fulfill their offices, unless the administrators have been such that they can plainly trust them. And often by the example of a few others are drawn, so that the excuse of uselessness is not easily to be admitted. Cf. Lugo, *Iust. et Iur.* d. 19, n. 68.

And if perhaps, on account of a different usage of examining nothing, questioning nothing, it is very difficult and troublesome to obtain anything in those assemblies, indeed to propose anything: upright shareholders ought to strive that this usage itself be changed.

In the Genus of Lust. We have already said several things where we were treating of scandal and of the cooperation of servants and artisans. These things remain to be said.

Concerning theatrical spectacles. a) Present-day theatres are accustomed to corrupt good morals in two ways. For the plays recited there accustom hearers to free loves, adulteries, divorces, whether these are approved or are represented as something obvious and consonant with nature; and by immodest garments and gestures they excite lust. The depraved effect of these is more immediate; direct or indirect doctrinal attack generates a more profound corruption. This is damaging to the married equally as to the unmarried, while lustful excitation is less grave in the state of marriage than among the unmarried. Finally, those who frequent theatres find there occasions of sin, whether on account of the players or on account of the others assisting.

Therefore, just as dances, so theatres, as much as the decency of one's state permits, are rather to be fled by the truly Catholic.

b) Those composing plays which are less honorable sin gravely, nor can they be excused. Nor in any way does he seem to be excused who, alone, does not refuse to say or sing obscene things, since he is compelled to utter these things in such a way that by these indecent things he produces laughter or applause: that cooperation is formal. One who himself has no lust to be provoked can be excused for a brief time if, on account of gravest inconvenience, he has a part in these exhibitions. He who has something to do in the chorus or musical concert can be excused more easily. As Gen. I, 242, says, common sense itself is accustomed to estimate their cooperation more benignly. Wherefore, where the things are not made extraordinarily scandalous, "they do not seem to be disturbed from good faith who think such cooperation lawful for themselves for making greater profit, acquiring reputation, etc." (Gen. l. c.).

c) Those who by their presence give no special scandal, unless they approach for themselves a proximate occasion of sin, are not to be accused of grave sin. Indeed they are to be dissuaded, especially young persons, from the constant frequenting of the theatre.

The cooperation of one who sometimes buys with money the right of seeing a spectacle is estimated as light. It becomes graver in proportion to the greater frequency of the acts. And they judge more severely one who pays an annual subscription. For he, so they say, is judged to approve and help all exhibitions, even disgraceful ones. But another interpretation underlies the matter, if by an annual

subscription he spares his own money, in keeping with his attendance. Wherefore the thing must be estimated from the name or reputation of the theatre. And since, if the subscription were denied, the theatre would morally enjoy the same fortune, for the same reason both assiduity and subscription are to be condemned or can be excused, at least from grave sin.

d) The same must be said of circus shows, which not rarely excite lust more than theatrical plays, and of "cinematographic" exhibitions.

e) For avoiding companionship dangerous to the husband, let a pious wife - unless the thing is too indecent - not hesitate to join herself as companion to her husband.

Cooperation Toward Depraved Writings. 1. It is never lawful to write things which are evil, dishonorable. - 2. That you insert indifferent narratives in newspapers which are not good, a grave reason will excuse you; a grave reason is required lest the cooperation of a Catholic be scandalous. But if, on account of elegance of speech, your cooperation increases the diffusion of the newspaper, a gravest excusing cause is required, and an effort must be made to remove that necessity. - 3. One who inserts commercial notices is excused by the damage which the omission of the notice would bring. Certainly it is of great importance for a newspaper that it collect many notices; but the will and utility of insertion are accustomed to be posterior to the diffusion of the newspaper already made, so that the omission of some notice little affects the prosperity of the newspaper. Besides, notaries and others who manage public auctions must, as if from contract, take care that sales be announced everywhere. But they deserve well of the Catholic faith who, through newspapers either good or even of indifferent argument, will have procured such diffusion of notices that to insert notices in depraved sheets becomes less useful or necessary. - 4. Apart from positive prohibitions of law in the purchase and reading of newspapers which are not good, each one must guard against damage to his own soul, which is accustomed to arise chiefly from habitual reading, against cooperation, which per se is light, and against scandal. Not rarely, where there has been cause for reading these sheets, it is expedient that a Catholic man, especially a priest, obtain them for himself through another person, more obscure.

N. B. Concerning printers and sellers, it was treated above.

Summary

§ 1. I. Concerning Spiritual Goods to Be Procured. One's own spiritual salvation can be neglected by no one without sin; yet this sin, by accusing other sins, is already accused implicitly by him who does not wish formally to lose his salvation. But never, for obtaining any good or procuring it for another, is it lawful to sin venially. And in a proximate occasion of sinning gravely no one per se ought to remain on account of the utility or necessity of other individuals or of a community. Yet, when the extreme spiritual necessity of neighbor urges, one can trust in a greater grace by which the proximate occasion is converted into a remote one. For honorable causes he will not sin who omits a spiritual good which more probably is greater; but what is better must be estimated from various considerations.

Neighbor laboring in extreme spiritual necessity must be aided even with certain danger to one's own life, provided that the hope of helping him is equally certain, and no graver evil thence, e.g. to the community or to the Church, is imminent. - A common grave necessity, i.e. a general one, they are accustomed to equate with an individual extreme necessity. But in the grave spiritual necessity of a

particular neighbor, grave inconvenience must be borne by him alone who must care for the salvation of another from office.

II. Concerning bodily and temporal goods to be procured, a) Principles to be kept before one's eyes. Charity does not oblige with grave inconvenience; and hence, except for morally extreme necessity, we ought not to relieve the temporal need of neighbor with notable inconvenience of our own. - Whatever we can deny to ourselves, to our own bodily or temporal safety, without sin against charity, that also we are permitted not to give to neighbor. - It is right to prefer a public cause to a private one, even that of those joined to us; public authority can even require this.

Scholion. To neglect one's own bodily health without cause, with grave detriment, is grave per se; but we are not bound to use great expense or long care, or an extraordinary remedy, for recovering health.

b) Concerning alms. In the stricter sense, it is the largess of an exterior temporal good for a temporal end; but in the fuller sense, it is the gift of the same temporal good for ends either temporal or spiritual; finally, in the fullest sense, it is the communication of every good and talent and faculty of a thing made for relieving necessities of whatever kind.

Material goods are distinguished: some are necessary, whether with respect to one's own life and that of one's own people, or with respect to state or condition, and this either simply or by attending to the decency of state; others are relatively superfluous.

We must aid one who is extremely or quasi-extremely needy under grave obligation; and this even from goods in some way necessary to one's state, if nevertheless the moderate amount of money, which alone in another private person's temporal want is to be contributed, can become necessary to the state of the one giving. In grave temporal necessity of neighbor, the grave obligation remains in such a way that nevertheless it does not remove the choice of a different good work.

In common material necessity, finally, a grave obligation, especially today, is not proved. One who has superfluous goods must sometimes give alms under venial obligation. To seek out the poor is highly praiseworthy, but per se it is not commanded. The quantity of commanded alms is found more by the usages of pious persons than by mathematical estimation. It is useful to designate some fixed part of revenues for alms.

Moderate alms from common goods or from the goods of the husband are permitted to a wife; and also, but more cautiously, to faithful servants. Tutors and curators supply or help the protected person; prelates bestow alms for the community.

But today alms of a more prudent method must be cultivated rather than trivial money given to a poor person; and especially spiritual needs must be aided. Besides, in place of local or regional alms, today national or international alms has succeeded: this does not allow us simply to confirm the norms once admitted concerning the quantity of alms.

§ 2. I. Concerning Fraternal Exhortation and Correction. 1. Pious exhortation, whether merely instructive, persuasive, instigating, or approving a deed, is to be commended as the best stimulus to acting well. - 2. But fraternal correction, i.e. a private admonition which, from charity, attempts to call neighbor back from sin, with grave inconvenience excluded, is imposed by charity: under grave obligation, when mortal sin can thus be avoided; under light obligation, if you very easily can, when

there is question of venial sin. Yet a Superior is bound under grave obligation to prevent the nerve of discipline from being relaxed even in lesser matters. If sin is excused by invincible ignorance, the obligation depends on the office of teaching, which is more proper to Superiors; yet it also urges others for damage to be avoided, either to the ignorant person or also to others.

The title of obligation is charity in private persons, piety in parents, religion or quasi-piety and sometimes justice in Superiors and Prelates; but the conditions are gathered by comparing, with the inconvenience of the one correcting, the necessity of the correction and the probability of effect, so that in doubt you are excused. Only the Superior must investigate, and that discreetly. Grave obligation will be rare in private persons; and the scrupulous are regularly excused from making correction. Although per se it is first to be made privately, various reasons permit that recourse be had immediately to the work of the Superior, unless the good itself of charity stand in the way.

II. Denunciation can be evangelical, or to the Superior as to a father, and it has for its end the good of the delinquent himself; canonical, or to the Superior as President of the community, for protecting this or for protecting an innocent person; judicial, as to the vindicator of public security. Judicial denunciation is lawful per se; canonical, as an extension of fraternal correction, and evangelical, which is a mode of this correction, are ruled by the norms of fraternal correction. Evangelical denunciation permits only medicinal punishment; canonical gives place to sanctions which protect the common good or that of the innocent person; judicial brings in public vindication. Unless the conversion of evangelical denunciation into canonical or judicial can be obtained or commanded, the Superior per se is prohibited by the general law of the secret committed from acting canonically or judicially.

The denunciation of a hidden corrupter in colleges is regularly to be advised, sometimes strictly to be imposed. Yet the qualities of the Superior, hope of fruitful admonition, damage of the one denounced, and inconveniences of the one denouncing must be weighed.

III. Spiritual edification is procured by good acts of simple, humble, and modest virtue, which, even if it ignores and hides itself, sufficiently wills the effect of good example so that the intention necessary for merit is by no means lacking in it.

IV. Concerning scandal. 1. Notions. Scandal completely taken, or with passive scandal, can be called a word, deed, or omission, on the occasion of which neighbor is so tempted that he sins. Per se, an action of this kind is only something which either is evil or at least has the appearance of evil. And such a deed, which generates for neighbor a temptation or danger of sin (cf. 2, 2, q. 43, art. 1), is called active scandal: either merely direct, when it is done with that intention that neighbor sin; or diabolical, if the very character of sin as such is intended; or indirect, when the sin of neighbor is indeed foreseen and permitted, but not intended. Passive scandal is the sin occasioned: either of the weak, when it has been received from fragility, or pharisaic, when from malice. The immediate effect of active scandal is the temptation of neighbor to sin, either under the same aspect as the scandalous thing, or under a different aspect. Wonder or horror of spectators properly is not scandal. As the malice of a witness brings it about that there is passive scandal without active, so either the uprightness or even the wickedness of witnesses removes the character of scandal, if for that reason serious efficacy toward temptation or danger of sinning ceases. Yet an evil action which is committed publicly is deservedly presumed to be going to be scandalous.

2. One directly scandalous sins in that species of sin to which he intends to lead another; and it is grave, unless it is terminated in venial sin; one diabolically scandalous is, besides, guilty of a grave sin specially contrary to the charity of God and neighbor. One indirectly scandalous, when he sins, violates the office of fraternal correction by a contrary act; but he wounds charity alone (unless also by another title, as a pastor or father, he owed spiritual edification), because the sin of neighbor is outside his intention and action.

3. The scandal of little ones cannot be permitted without a proportionate cause, which is required graver when there is scandal of the weak, or of several, or certain, than if it is uncertain, or of one, or pharisaic. From a cause of necessity or sufficient utility the scandal of the weak can be permitted; indeed sometimes it must be, if otherwise you would sin, or your salvation would be endangered, or you would gravely harm others. Any cause per se suffices for permitting pharisaic scandal. Indeed, for a grave cause, e.g. of testing virtue, it is right, through an action not evil in itself, deliberately to give another an occasion of sin.

4. He who has scandalized others must act in such a way that the force of the evil example is morally extinguished.

5. Applications. On account of a proportionate cause, we are not forbidden to ask an action, even with money paid, from one who, on account of his own malice, indeed on account of an erroneous conscience, will sin subjectively: because only a good is intended and nothing objectively evil is chosen. If it can be done, the false conscience of the other must be corrected, with an explanation given. For the other applications, cf. the text.

6. Concerning women's adornment, dances, images, cf. T. IV, *De Castitate*.

7. To one who has determined to do evil, it will be lawful to suggest a lesser evil (with a graver reason of scandal excluded) of the same kind, provided that by your counsel you do not harm a third person who is reasonably unwilling. Nor does counsel concerning an equal evil seem per se to be condemned, or counsel by which you avert from Titius an evil which another had decreed to inflict disjunctively either on Titius or on Caius.

V. Concerning Cooperation. 1. Cooperation signifies the simultaneous action of two or more persons. Cooperators, more strictly, are called all besides the principal executor.

Formal cooperation, strictly so called, joins the intentions themselves, to which then every other cooperation is opposed as material. But cooperation is also called formal, a little more broadly, when in itself, whether by its nature or by its necessary signification, it contains goodness or malice of the same kind as the principal action. Others call this immediate material cooperation. It is distinguished from mediate material cooperation, which, when it is toward evil, is done through an action wholly extraneous to the malice of the principal action which is considered. According to distance from the principal action, cooperation is called proximate or remote.

2. Manifold cooperation toward good, which not rarely contains the merit of humility, and which can also be furnished by prayers and every good work, in order that it may participate in the merit of the principal action, must be formal, or at least conscious, and, as such, approved.

Those who are admitted by Superiors of religious institutes to the society of merits and good works, besides the utility of prayers and sacrifices which are offered for them, as joined with the religious institute in a special way, derive from its merits and good works a fruit analogous to that which accrues to those themselves who have been enrolled in the religious institute.

3. Formal cooperation toward evil, and also immediate material cooperation, with the exception of injustice in material goods - participation in which is sometimes excused by the right of necessity - is necessarily contaminated by the malice of the principal action, so that it is intrinsically evil if the principal action itself has been such. Even mediate cooperation is illicit per se, since it is opposed to the office of fraternal correction, besides the dishonoring of God or damage to another, which are often added.

And illicit material cooperation, if it is positive, wounds not charity alone, but various virtues which can require that our action, even against our will, not have an efficacy opposed to them. - Material cooperation becomes lawful when it is combined with sufficient care of virtue, or is excused by a proportionate inconvenience.

The estimation of proportionate excuse is laborious because of the difficulty of adequate investigation, of the certain distinction by which an action intrinsically or always illicit is discerned from an action not yet evil in itself, and of attention to concurrent reasons of scandal and cooperation; because of disagreements among writers and an excessively servile or literal dependence on classic authors, who, although they are most useful counselors for us, nevertheless were writing in circumstances other than ours.

Furthermore, material cooperation will then be lawful if it betrays no affection toward evil, if scandal is removed or can be permitted, if the damages of cooperation are compensated by an excusing cause.

For estimating these things, it must be kept before the eyes what charity, and what the other virtue to which the principal action is opposed, prohibit or command.

In the examination of a cause, first let what is intrinsically illicit in it be defined; then let the various respects be considered, both of the cooperator, of the principal agent, of others, of the virtue to be wounded, of the preceding evil action which perhaps is helped, and of the following effects.

After these things have been considered, the simple intuition of a prudent man will give a certain presumption of a right response; yet according to the importance of the matter it will have to be confirmed by a distinct inspection. Finally, counsels must be added to the response.

But excusing causes are distinguished as very slight: loss of ordinary profit; light but reasonable: service, extraordinary profit; rather grave: fear of losing good service, infamy before one discreet man, great indignation of a husband, father, or master; very grave: loss of state, infamy before several, danger of falling notably from one's state; gravest: danger of a good to be compared with life. Other things being equal, a graver excuse is sought from positive damage than from gain ceasing.

Illicit cooperation in another who is prepared to furnish it cannot honorably be rejected by direct petition; but it is lawful to refuse one's own cooperation with foresight of another's substitution, indeed to ask the distributor that these things not be imposed on us.

Applications: with attention to the condition of persons, they are made to priests, religious women, servants, innkeepers, artisans, merchants; with attention to various objects, cooperation is examined toward false worship, toward exhibitions or recitations of theatres that are less honorable; toward depraved writings; toward political parties; toward illicit things of societies. Concerning these things, cf. the treatise itself, and T. IV, *De Castitate*.

Book II: On the Moral Virtues

Observation Concerning the Order. - What the moral virtues are and how they are divided, we said in I, nn. 495, 496. Moral theologians are not accustomed to prepare a place for the individual virtues. But, according to their practical intention, when they treat of the first three precepts, they are accustomed to weigh acts which pertain to the virtue of religion; they explain the virtue of piety under the fourth and fifth precepts; they refer the virtue of chastity to the sixth and ninth precepts; they ascribe the virtue of justice to the seventh and tenth precepts. Yet in the exposition of the fifth precept fortitude and justice itself claim certain parts for themselves. Furthermore the virtue of chastity is a subjective part of temperance; its exposition completes the things which were said in I, 475-484 concerning gluttony and drunkenness, concerning the virtue for which the name of temperance is reserved as proper; to restrain anger and to shake off sloth are also parts of fortitude.

We, imitating St. Thomas in 2, 2, shall formally refer to the virtues the things which we have to propose. And after prudence, to which, as directive, we shall assign the first place, in order we shall treat first of religion, of piety, to which observance comes nearest; then of justice, of which the virtues just named are potential parts; then of truth and sincerity, which are also placed under the cardinal virtue of justice; finally of temperance and humility, and of the cardinal virtue of fortitude. The treatise on chastity and the opposite vices is reserved to Tome IV.

We have already warned that the distribution of virtues into cardinal and potential is not of an ontological but of a logical order, so that logical subordination prejudices no excellence of virtue. Indeed, on account of honor to be rendered to the nobler virtue, we shall treat of religion and piety before the cardinal virtue of justice, to which both are logically referred.

Treatise I: On Prudence

Utility. - Because the more practical questions of this treatise can also be weighed under various other heads, manuals of moral theology are accustomed scarcely to concede express mention to the cardinal virtue of prudence. Yet it is useful to possess a right and distinct notion of this virtue, and accurately to discern how it differs from human prudence, which, per se, is without merit. In these pages, insisting on the footsteps of St. Thomas, we shall attempt to furnish this.

Article I: Notions

I. Previous Notions Concerning the Practical Intellect and Intellectual Virtue. 1. The properly practical intellect is not yet that in which certain judgments concerning things to be done and omitted are made and contained. For these can present themselves speculatively to the human mind without any relation to future action. Cannot a professor propose ascetical norms without any zeal or will for pursuing perfection? Indeed it happens too often that a man acts against conscience, or a judgment of this kind. But a judgment to which a contrary action is opposed in truth does not pertain to the act, i.e. is not practical. But that intellect is called practical which, from the motion of the will wishing to act, deliberates, judges, and commands. Yet because the human will is not compelled by such deliberation and judgment of the intellect, but can deny consent and draw the intellect to another practical conclusion through the mediation of an opposite consideration, that intellect is to be called practical most especially which is mingled with action, or which, after consultation and judgment, is informed by the command of action.

And they note that, since the will is a rational appetite, it indeed lies in its power, by application of the intellect to considering diverse things, to change the ultimate judgment concerning an action to be done or omitted; but by no means can it happen that it act without a practical judgment, or disagree from some practically ultimate judgment. Therefore no free action is done without its being indicated in some way that one must so act.

This process of our actions can be narrated more distinctly thus.

From a true will of any end whatever the intellect is moved to considering, by inquiring, the means; then, at the end of the inquiry, to giving a sentence concerning suitable means; finally to proposing the execution of the means; which proposal, from the motion of the will, becomes a command, by which the proposal is prescribed to the active faculties as to be followed.

Let us suppose someone who wishes to obtain some office. He will deliberate, he will consult concerning the way. Besides conciliating to himself the benevolence of the prince or collator, which is immediately perceived to be necessary, the very mode of conciliating favor will be investigated. A sentence of this kind will impose an end upon that inquiry: this mode seems most suitable. And, from the same desire of office, the discovered mode will be proposed as to be embraced, with greater or lesser force, according to its efficacy, the estimation of the office, and the difficulties joined to its

execution. The will chooses the proposed mode by approving it; and the discovered mode becomes the exemplar of execution: the act is accommodated to the intellectual reason.

2. Because every virtue perfects our free acts, intellectual virtue is not wholly in the intellect, but also supposes a good disposition of the will; nor can the act of such a virtue be had without motion of the will. Wherefore intellectual virtue grows together from a good disposition of will and intellect. Therefore qualities of mind, just as bodily health itself, can indeed aid virtue; yet they are not formally virtuous; and a good disposition of the intellect cannot, as such, be meritorious. Those qualities can be placed among the beginnings of virtues which the will can use for the end of virtue, and which are perfected from the use itself of virtue.

II. 1. Prudence, more broadly so called, is a certain art of attaining the intended end, which end can be merely human, indeed evil, so that the Lord could call the children of darkness more prudent than the children of light.

2. The virtue of prudence properly so called, in acting, presupposes the intention of good, and is accustomed to be defined: right reason of things to be done. Reason is the same as the representative form of the intellect presenting action as doable. - It is right insofar as it agrees with right appetite; or insofar as, after sufficient study, it says that that is to be embraced which appeared consonant with the rule of morals; and insofar as it proceeds from a good will. - Of things to be done. By this word there is assigned to prudence an object other than the object of art: art regards things to be made. But by the plural number the habit is indicated.

This right reason follows right inquiry and right judgment; and it is completed by the command of an honorable action.

3. Concerning eubulia. The solicitous inquiry of honesty, proceeding from the intention of the honorable, is an act of eubulia. If this solicitude is had easily and readily; if, for example, it is disturbed by no impulse of passions, it reveals in the intellect the acquired virtue of eubulia: indeed, its act is morally good, and no one uses it badly. For to inquire into the honorable from a will of acting honorably is necessarily morally good.
4. Concerning synesis or gnome. The sentence pronounced concerning the morality of such an action is also necessarily good, insofar as it too proceeds from zeal for the honesty of the action. If this sentence is founded in law or in a higher reason, it is ascribed to synesis or gnome. Again, if that sentence is easily sincere and firm, it will mark a virtuous habit of the same name.

III. Prudence, a Cardinal Virtue. The preceptive election of an action indicated as honorable, which election is composed of the practical conclusion of the intellect, that the action is to be done, and of the consent of the will, is the most proper act of prudence. This act is meritorious in the just man, for it flows from a free intention of the honorable, and by it one lives well. And if it has been prompt, ready, and efficacious, that election marks the virtuous habit of acquired prudence.

That we may set forth this process more distinctly: not otherwise than in the temporal order, so in the moral order, from the supreme judgment of synteresis, by which it is pronounced universally that

the law of God is to be observed, that one must live honorably, the will freely inclines toward honesty, wishes to act honorably. - Consultation receives this intention of honorable good: what is honorable; that is, the inquiry of the honorable, which we are ordered to make solicitously, with the care which is fitting.

Judgment concerning the morality of the action completes the inquiry: this is honorable, good, or better. That judgment can be founded either in consideration of law, or in attention to a higher reason of the law. We are ordered to place a sincere judgment of this kind before our action. - Then the same judgment is offered by the intellect as to be followed practically, as if equivalently, with greater or lesser force of reasons, it had said: "Do this honorable thing."

The will assents; and there is had the election of an honorable action, which, from the motion of the will, is the command of that action imposed on the subject faculties. The honorable thing will be done according to such a command. Thus the idea of law in the Prince becomes, from the will of the prince, a precept for subjects and the exemplar of the actions of those who obey.

IV. Degrees of Acquired Prudence. The more vehement the intention of good will be, and the higher the good itself intended; then the more the intellect will be disposed to seek studiously, to recognize the honorable sincerely, and to discern better its lovableness in the light of reasons, the better and stronger the intellectual virtue will be.

It is necessary accurately to discern these superior dispositions of the intellect, by which it serves the will of the honorable, from qualities of mind, for example natural subtlety, which can be used for any use whatever. Thus a learned and acute man will more easily be able to find speculatively the reasons of the honorable; yet in true prudence he will yield to the duller mind of a more virtuous man, insofar as this latter is endowed with greater practical zeal for the honorable. For the moral value of the command must be estimated from the motive force of the intellect.

V. Corollaries. 1. A fuller description of prudence can be this: a virtue which perfects the practical intellect so that, with the will moving it, it promptly and easily commands things to be done which are apprehended as honorable and more honorable.

2. Prudence is not accurately described by acts of recognition or judgment. Wherefore Tanquerey, after, in II, n. 1049, he described prudence as the virtue by which the intellect is directed "so that in individual operations we may discern what is honorable and conducing to the end," is forced to correct himself, n. 1051, where he places the third and principal act of prudence as "the precept, by which reason practically not only pronounces what must be done, but commands it."

3. The province of prudence regards not the end itself but the things which are toward the end. For it supposes the intention of the end and ends in the election of the means.

4. The functions of prudence are: to consult well, or, under the respect of moral good, to investigate; to judge well, or, at the end of the investigation, to pronounce with certitude what must be done under the same respect; to command well, or efficaciously to order toward the work.

VI. Vices Opposed to Prudence. These vices are divided by St. Thomas, 2, 2, qq. 53, 54, 55, into two genera: imprudence, through defect either of prudence itself or of the previous acts which are required for prudence; and false prudence, which abuses the means of prudence insofar as it either pursues a disordered end, as the prudence of the flesh, or uses illicit ways, as cunning: these latter are opposed to the virtue of prudence by excess. That we may omit these latter things, defect can affect prudence in the prior acts of counsel or of judgment, or in the proper act of commanding. But counsel is impeded or vitiated by precipitation, judgment by inconsideration, right command by negligence or inconstancy (2, 2, q. 53, art. 2). Precipitation is in the impulse of will or passion, which passes over the elements of sound deliberation (*); inconstancy is defect of stability in commanding, or in a withdrawal from a good proposal previously defined; negligence is defect of solicitude or of prompt will.

(*) What precipitation is, and what mature deliberation requires, St. Thomas very beautifully explains in 2, 2, q. 52, art. 3, c.

But, just as natural gifts of mind effect a certain natural prudence which is without merit, so from defect of those gifts there results a certain imprudence which is without demerit. Blameworthy imprudence supposes a disorder of free will, as when by the impulse of passion it is carried away toward counseling, judging, or commanding badly. Yet conscious natural defect gives place to moral obligations of attention, precaution, and correction, which can be observed or violated.

In every sin a certain imprudence is committed; yet it is not a general vice, since it is concerned with special acts, i.e. acts of reason. But since it extends itself to every moral matter, it is not a special vice by reason of matter, and by accusing the sin committed, the imprudence itself is sufficiently accused, unless someone from formal contempt of prudence wished to be imprudent (cf. 2, 2, q. 53, art. 1, and 54, art. 1 c.).

VII. Concerning the Connected Gift of Counsel. In what way the Holy Spirit perfects our virtues through His gifts, we indicated in tome I, n. 497.

According to St. Thomas, 2, 2, q. 52, art. 2, prudence is aided and perfected by the gift of Counsel, by which we are moved by the Holy Spirit, as by a Counselor, toward inquiring rightly concerning things to be done. But why the gift of the Holy Spirit perfects the innermost act of the virtue of prudence, or consulting well, rather than the higher acts of prudence, St. Thomas brings this reason: judging and commanding, which are those higher acts, belong to one moving, not to one moved, while counsel can arise no less from another than from the one deliberating.

For since in the gifts of the Holy Spirit the human mind does not have itself as moving, but rather as moved (2, 2, q. 52, art. 2 ad 1), prudence must be perfected in that act which, from its nature, carries with itself the direction or admonition of another. But in consulting we are connaturally aided by the counsel of another. (Concerning the mode by which the gifts of the Holy Spirit act, cf. J. de Guibert, S.J., *Dons du S. Esprit et vie mystique*, *Revue d'ascetique et de mystique*, 1923, pp. 321 ff.)

Summary

— Prudence is to action what art is to making. Art is defined as right reason of things to be made; prudence is defined as right reason of things to be done. But this difference exists between each: art does not depend on a good will, while prudence properly so called, as every virtue, with the grace of

God, lies in our power. For the rectitude of which there is question in the brief definition does not regard some human or temporal end: of this prudence, which is called prudence in a certain respect, even saints can lack or be deprived; but it is estimated in order to the good simply. Wherefore it is described more fully: a virtue which perfects the practical intellect so that, with the will moving it, it promptly and easily commands things to be done which are apprehended as honorable and more honorable. The practical intellect is that which truly, as a directive principle, is mingled with our action. It differs from the speculative intellect not in reality but in reason; the speculative intellect also can know practical things.

Furthermore, the functions of prudence are: to consult well or investigate, under the respect of moral good; to judge well, or, at the end of investigation, to pronounce with certitude what, under the same respect, must be done; to command well or efficaciously to order toward the work.

To the virtue of prudence there is opposed, by defect, imprudence, either in the prior acts of counsel, i.e. precipitation; or of judgment, i.e. inconsideration; or in the proper act of commanding, i.e. inconstancy or negligence. Yet blameworthy imprudence supposes a disordered will; and although it is special, since it affects special acts of reason, for the most part, when the sin to which the bad direction of the intellect has led has been accused, it is sufficiently accused.

Besides, the obligation either of paying more attention or of correcting a defect flows from a natural defect of prudence. To the same virtue of prudence there is opposed, by a certain excess, false prudence, which is toward an evil end, and cunning, which is materially prudent by illicit means.

Treatise II: On Religion

Why in this place concerning religion. - Adhering to the logical distribution, St. Thomas, when he has completed the articles concerning prudence, at once takes up justice, the cardinal virtue of which religion is a potential part. Most theologians of today, however, with whom we agree, prefer the order of dignity, so that they treat first of religion rather than of justice.

Title I: The Notion of the Virtue and Its Elicited Acts

Utility. - It greatly concerns the moral theologian to acquire for himself an accurate notion of a virtue whose very mention, in the present manner of treating honesty, is too often passed over, so that he himself may esteem it more and preach it more efficaciously.

Taken not as a form of worship commonly imposed on several persons (the Catholic religion), but as a virtue, religion is the moral virtue by which the interior and exterior worship which is owed to God is truly exhibited. Most noble after the theological virtues, religion is joined to justice, but as a potential part, because we can never render to equality what we owe to God the Creator, Lord, and universal Benefactor, and because God is also worshiped by free acts. - The material object of this virtue is the various acts of worship, to the doing of which it inclines on account of the special honesty of observing that divine excellence which infinitely transcends every other.

It is immediately clear how religion differs formally from charity. While charity loves, religion adores; the former observes unity, the latter distance and dependence: the former is of an equal friend, the latter of a creature and an inferior. Yet there is no opposition between the two; for is not the miracle of goodness which overcomes the distance between God and us most apt for kindling and nourishing love and at the same time the will of every submission?

Religion, a virtue of the will, has in the will its internal or strictly elicited act. And it is that very affection by which the soul submits itself to that infinite excellence, and intends or seeks the honor of God.

This same affection inspires Christian humility, which, not content with a moderated pursuit of one's own excellence, reveres God's excellence by contempt itself for earthly sublimity. Cf. below, the treatise on Humility.

Whatever acts break forth from that affection of subjection, strictly speaking, are commanded acts of religion. Among them, however, some, by their own nature, signify our affection toward God in such a way that, whether they are interior or even exterior, they contain divine worship per se and are referred among the proper acts of the virtue of religion. These, by a certain broader usage, are also called elicited acts of religion. They are: devotion, adoration with sacrifice, prayer, praise, vow, oath, sanctification of feasts, pious offerings of things or persons. But because all good acts glorify God, we can also perform all from the intention of religion: such acts are then said to be commanded by the virtue of religion. Thus the whole life of religious, morally considered, is made honorable by a general intention of religion.

N.B. - The logical division of the present treatise would be that in a former section we should treat of the individual or singular exercise of the virtue of religion, in another of its collective or social exercise. This latter is performed both by the profession of common religious life and by the sanctification of feasts. - But both arguments must be postponed. Therefore we shall treat only of the individual exercise of religion. Hence first we must treat of the positive acts of the worship of God, which we shall set forth according to the order of the divine precepts to which they correspond, and then of sins against the virtue of religion.

Summary

— Religion is here understood as the moral virtue by which the interior and exterior worship owed to God is exhibited. Worship denotes the reverent execution of the offices which we have toward God as He is our Lord. The honesty of rendering the things which are owed to the Lord under this title is the formal object of religion; the material object is the various acts of worshiping. The very interior affection toward worshiping God is the strictly elicited act of religion; more broadly elicited are acts, whether interior or exterior, which contain divine worship per se; commanded are other good acts which have been performed from the intention of divine service.

Title II: The Positive Offices of Religion

Utility. - In its positive part the treatise on religion embraces several things whose importance is immediately manifest. For the general exposition of acts of worship offers occasion to instruct the candidate of theology concerning the genuine notion of liturgy and its right estimation, and to preserve him from several practical errors. Concerning the efficacy of prayer one must speak prudently, and it is fitting, by a few notions, to prepare the way for mystical theology itself. The things then proposed concerning prayer, concerning oath and vow, pertain to daily use. It is of particular importance to know what must be thought concerning a fictitious oath, lest that holy thing become an instrument of tyrannical oppression, and in what way the power of invalidating vows must be understood.

The order of speaking will be this: first we shall treat of varied worship in general and of liturgy, then of prayer, then of oath and adjuration, finally of vow. The Decalogue itself is the author of this order for us, since prayer has customarily been referred to the first precept, but oath and vow to the second precept.

Chapter I: On the Essential Office of Worship

Article I: On the Varied Manner and Termination of Worship

§ 1. On Worship in General

What worship is. Every care concerning some thing is marked by the name of worship or cultivation: care of the body, of knowledge. More specially, however, it signifies the recognition and practical observance of the excellence of a Superior. Thus all acts by which man subjects himself to God so that he may render to Him what is owed to Him are acts of divine worship. And such are all acts of the virtue of religion.

When we say this, we by no means affirm that those acts are wholly acts either of worship or of religion: for not insofar as they are directed to our good, but insofar as they express an order toward God, are they acts of worship. But that they may be acts of religion or worship, it is enough that they manifest an affection of subjection toward God and of trusting reverence.

Finally, more strictly, acts of worship are acts protestative of divine excellence and of man's subjection under God; or the acts which we have called elicited acts of religion.

Of how many kinds worship is. I. Worship is interior, in devotion of the mind, and exterior, which is subdivided into private and public. Public ritual worship is called liturgical, of which below. Sacraments also pertain to public worship: for they are at the same time for the remedy of sin and for divine worship: whether by consecration they depute a man to divine worship, as Baptism, Confirmation, and Order; or purify the consecrated worshiper, as Penance and Extreme Unction; or prepare worshipers and represent a holy thing, i.e. the union of Christ and the Church, as Matrimony does; or are themselves acts of worship, as is the confection of the sacrament of the Eucharist, which is done by sacrificing.

From c. 1256, public worship is that which is rendered "in the name of the Church by persons legitimately deputed for this and by acts which from the institution of the Church are to be exhibited to God, the Saints, and the Blessed alone." In this canon, as is clear from the Constitution *Quamvis iusto*, 30 April 1749, § 12, of Benedict XIV, to which we are referred in a note, the particle *and* adds not a second required condition, but another form of public worship, so that it has only the force of *or*.

Acts which are permitted to be exhibited only to God, the Saints, and the Blessed are: to place images on an altar, to depict them with halos, rays, or another sign which manifests and excites worship, to hang votive tablets or votive gifts at their tombs, to light a lamp before relics or to propose them for public veneration. On the contrary, that persons not beatified be depicted on the walls or in the colored windows of a church, without a sign of sanctity; that, with the Ordinary consenting, to whom the matter must be referred, things obtained "from a vow" with testimony of a grace received be kept secretly: these do not pertain to public worship.

Although not a few pious writers are still accustomed, in describing the lives of Saints, to insert protestations which have their name from Urban VIII, nevertheless those decrees have now been

abrogated by the Constitution *Officiorum* of Leo XIII, 25 January 1897. Cf. our *De prohibitione et censura librorum*, n. 19 note and 79.

Today only these can be honored with public worship who by decree of the Holy See have been numbered among the Saints or Blessed. This discipline was introduced by Alexander III (1159-1181), and perfected by Urban VIII. Therefore, concerning the formal canonization of Servants of God who are prior to Alexander III and are named in the martyrology, the Church is not solicitous. Immemorial worship rendered to Servants of God who lived after Alexander III and before the time fixed by the Constitution of Urban VIII[1] can remain in the state in which it is. Indeed, concerning their beatification a process can be instructed "by way of worship or of an excepted case," so that that worship may be formally approved. Once this approval has been obtained, the Servant of God is equivalently beatified. Cf. canons 2125-2135. More recent Servants of God, on the contrary, cannot be beatified or canonized unless it has first been established that no public worship had been given to them. Therefore the process is called "by way of non-worship." - From the decree of S.R.C., 26 August 1913, Servants of God can no longer be called Venerable from the time their cause has been introduced, but only from the time the heroicity of virtues or martyrdom has been proved.

Canonization, but not Beatification, contains an infallible and irreformable judgment. Therefore "Saints can be honored everywhere and by any act of worship of that genus (dulia); but the Blessed cannot be honored except in the place and manner which the Roman Pontiff has granted" (c. 1277, § 2). These modes are shown, some from immemorial custom, others from a special indult. Cf. Wernz, *Ius Decret*. t. 3, n. 367.

Private worship is honorably bestowed on him whose sanctity is morally certain to you. Thus baptized infants, although, because they have exercised no heroic virtues, they are not subjects of canonization (Wernz, t. 3, n. 365), can be invoked by parents and brothers as true intercessors before God.

[1] I.e. the year 1534. On account of a particular cause, however, that time is taken with a certain greater latitude. Cf. *Epitome iur. can.* II, 602.

— II. Worship is distinguished as *latria*, which is proper to the infinite divine Majesty; *dulia*, which honors the singular likeness with God which the Saints participate. The special name *hyperdulia* is today reserved to acts by which the singular dignity and sanctity of the Virgin Mother of God is honored, on account of the peculiar proximity to God which divine maternity conferred upon her. Cf. 2, 2, q. 103, art. 4, ad 2. Hence indeed she is akin to the Word, because she is consanguineous with the human nature which the person of the Word espoused to Himself.

Except sacrifice, which is proper to the worship of *latria* and pertains to public worship, other external acts, according to the intention of the one honoring and the circumstances, can manifest *latria* or *dulia*: thus genuflection, the lighting of lamps, and also fumigation (the offering of incense).

— III. Worship is distinguished besides as absolute and relative. Absolute worship is terminated at persons; relative at things which are connected with a person and thus participate a certain sanctity, which is the cause why they cannot be treated unworthily and can be positively affected with honors: relative honors indeed, because they are mediately referred to a person. Among these things, relics themselves are placed. Cf. c. 1255 § 2. Persons themselves who represent others more worthy, e.g. Legates who represent a Prince or the Supreme Pontiff, are honored with relative worship. But we

can, almost as we honor God in His Saints, merely use an image for representing to ourselves a person, and thus directly, through the image, honor the person represented: then the image itself is not honored. The declared reason for relative worship shows why the worship of an image is not the same as the worship of the person; why the image of a less worthy person can be honored more than the image of a more worthy one; and why the various images of the same person are honored in various degrees.

— Concerning the worship of relics, cf. canons 1283-1287.

That we may gather these things into a few points: a) Only those relics can be honored with public worship in churches which have legitimately been "authenticated." b) Holy relics whose documents of authenticity have perished cannot be exposed for public veneration without the judgment of the Ordinary of the place. In these matters the Vicar General needs a special mandate. c) Ancient relics are confirmed in the possession of their veneration, unless it is certain that they are false. d) Ordinaries of places must prudently remove from worship a relic which they know certainly not to be authentic; and at the same time restrain imprudent attacks.

Notable relics, or those which in some church are honored with great veneration of the people, cannot validly be alienated or transferred perpetually into another church without permission of the Apostolic See. Notable relics are the body, head, arm, forearm, hand, leg, or that part of the body in which the martyr suffered, provided that it is entire and not small (c. 1281, § 2). The same cannot be kept in private houses or oratories without the express license of the Ordinary of the place (c. 1282, § 1). Relics of the Most Holy Cross are never to be exhibited for public veneration in the same case with relics of the Saints, but are to have their own separate case (c. 1287, § 2). Finally, "to sell sacred relics is wrong" (c. 1289, § 1).

— Concerning the worship of sacred images. Cf. cc. 1279-1281, 1385 and 1399.

The blessing of images is not prescribed by any canon as to be done; but "if images exposed to public veneration are solemnly blessed, this blessing is reserved to the Ordinary, who nevertheless can commit it to any priest" (c. 1279, § 4). - No unusual image can be placed in churches, even exempt ones, or in sacred places unless it has been approved by the Ordinary of the place: to this certain cautions are prescribed by c. 1279, §§ 1-3. - "Precious images, i.e. those outstanding by age, art, or worship, exposed to the veneration of the faithful in churches or public oratories, ... are never to be repaired without consent given in writing by the Ordinary; who, before he grants license, is to consult prudent and expert men" (c. 1280). - Precious images, or those which in some church are honored with great veneration of the people, cannot validly be alienated or transferred perpetually into another church without permission of the Apostolic See (c. 1281, § 1). - Sacred images to be printed must be submitted to ecclesiastical censorship; moreover printed images are prohibited which are alien to the sense and decrees of the Church (c. 1385, §§ 1, 3°; and 1399, 12°).

§ 2. Liturgical Worship

(1) This paragraph concerning liturgical worship we must credit to Rev. Fr. I. Hanssens, S.J., professor of sacred liturgy in the Pontifical Gregorian University and in the Pontifical Oriental Institute.

I. - The Right Definition of Liturgy

I. Conditions of a Good Definition. Liturgy is called the whole order of liturgical acts. But these acts, in order that liturgy may constitute some species and be the object of its own science, must: 1) have some proper nature, i.e. refer one and the same quality by which they both agree among themselves and differ from other acts of the same genus; and furthermore this quality must in some way be natural or essential, i.e. be joined by an intimate connection with those acts and constitute their intrinsic reason; 2) by reason of that nature, have neither too slight a place nor too light an importance among the acts of Catholic life.

That this order of acts exists and must be called by the name of liturgy will soon appear.

II. Insufficient Definitions. Such, on the contrary, would not be a liturgy which would be only the decorative part of worship, ceremonial, aesthetic; - or its ecclesiastical and human part, opposed to the other part, i.e. the essential and divine part instituted by Christ Himself. For, although perhaps such a sense can also be attributed to the word liturgy itself (let the grammarians see to it), liturgy conceived in this way would not have a sufficient place among the acts of ecclesiastical life; besides, the quality by which liturgical acts would be constituted would not be natural or essential, but wholly exterior and accidental. Nor is it enough to say that liturgy is that part of worship which comprises the sacrifice of the Mass, the sacraments and sacramentals, and canonical prayer; or that it consists of those acts whose norms the liturgical books legitimately define: for again in such definitions any intrinsic and essential note is lacking.

For this reason we cannot make our own the definition defended by the distinguished Callewaert, a man so well deserving of liturgy, according to which "liturgy is public worship insofar as this is ordered by ecclesiastical authority"[1], and which the author himself equates with the definition proposed in the notable manual of Thalhofer-Eisenhofer[2]. It has rightly been objected to this definition that it establishes a specific reason too exterior, i.e. the ordering impressed on worship by the Church, and thus excludes from liturgy the rites themselves, at least insofar as they are already defined and instituted by Christ Himself, such as, for example, the Eucharistic sacrifice itself in the Mass, and the substantial rites of the sacraments[3].

III. The True Definition. This is reached partly by deduction and partly by induction. For several centuries, however, all experts have connected liturgy with the public worship of the Church (concerning worship and specifically concerning public worship, cf. above n. 165, 166). Yet liturgy cannot yet be defined by public worship itself; for there are some acts of public worship in the Church which are not counted among liturgical acts: for example, sermons. Therefore proceeding further, we shall say that liturgy is public worship in the Church insofar as it consists of rites, or that it is the public and ritual worship of the Church; but by this note, that it is ritual, the specific reason of liturgical worship is constituted. A rite, moreover, can be defined as an exterior action to be done according to a definite form, by which some effect is signified and, *ex opere operato*, taken properly or more broadly, is produced, either in the sanctification of souls or, as in our case the matter stands, for the honoring of God. Every rite, although it is simple and stripped of all pomp, nevertheless necessarily possesses some stability and gravity. Liturgy is composed not only of rites instituted by the Church, but besides, indeed chiefly, of rites instituted by Christ, even before and apart from every ordering impressed upon them by the Church. As to the rites of the sacraments, although principally they tend to the sanctification of souls, nevertheless at the same time and equally immediately they

are directed to the honor of God, and this by the very fact that they express and signify themselves as effecting the sanctification of the faithful, which is a most excellent work of divine power and goodness. Ceremonies are secondary rites, completing the principal rites and adding beauty and majesty to them, so that indeed they beget similar effects, but through rites properly so called.

Liturgical worship, although of itself it suffices that it be exercised in the name of the universal Church but apart from the community, nevertheless has been so instituted that it ought per se to be performed by the very legitimate and public (*officielle*) communities of the Church, i.e. collectively and hierarchically; and in fact it is usually performed in that way. This is true of Mass, of the canonical hours, which are the common office of some group, even if, by way of habit or exception, they are permitted to be recited apart from choir: this is true of the administration of all the sacraments and of the sacrament of Penance itself, as is clear from its history.

[1] *Liturgicae Institutiones: Tractatus primus*, Bruges 1910, p. 6, n. 6.

[2] *Handbuch der katholischen Liturgik*, 2nd ed., t. 1, 1912, p. 4.

[3] D. Franco de Wyvls, *Tydschrift voor Liturgie*, 1920, p. 140.

— You ask, what are rubrics?

Rubrics are those rules which prescribe only the exterior manner of ritual actions, with no distinction made between rites and mere ceremonies, between necessary rites and adventitious rites, and with no explanation added of their sense or efficacy. For example, in exactly the same way they describe the rites occurring in the incensation of the altar and the rites proper to the consecration itself. The rubric therefore is the "letter" of ritual worship; but the "spirit" of this worship is the native signification of the rites and their proper efficacy.

The rubric must be animated and ruled by the spirit. In turn the spirit itself is subject to other necessities, which it pertains to the rubrics legitimately to define and to confer on them the force of law. Thus it happens that, while the spirit of the prayer *Domine non sum dignus* to be said in distributing Communion requires that it be recited by the faithful person himself, nevertheless on account of decency or for some other reason, the rubric fittingly establishes that it be pronounced by the priest himself in the name of the faithful person. By the same reason the dialogue Mass is consonant with the spirit of the liturgy, but it can be ignored by the rubric, indeed on account of extrinsic reasons it could be condemned by it.

II. - The Parts of Liturgy in the Spiritual Life

The Spiritual Value of the Liturgy. It is scarcely necessary to say how great these parts are in the life of the universal Church. Is not public worship to be rendered to God to be placed among her more principal duties? But now, who does not see that in reality public worship is almost wholly contained in liturgical worship? Therefore, the faithful who become partners of liturgical worship, how fitting it is that they perform so great a duty worthily and intelligently!

Nor is fruit for souls lacking from such participation. For:

1. Liturgical worship, because it is ritual, pours into the soul the sense of some mystery and superhuman power, which greatly helps men to approach God with greater reverence.

2. For the same reason, i.e. because it is ritual, liturgical worship appears endowed with an efficacy which transcends ordinary human powers, and thus begets greater confidence.
3. Because it is adorned with pomp, it brings much beauty and majesty to the whole Catholic religion.
4. Because it is public, it excellently illustrates before all eyes the nature of the Church as she is a society.
5. Because it is stable and one, it awakens the sense of unity in time and unity in space, that is, of continuous tradition and catholicity. Therefore it is a most powerful remedy against excessive individualism and a document accommodated to all souls of a truly Catholic life, that is, collective and hierarchical.
6. Finally, by reason of the very means which it uses for signifying the honoring of God, it at the same time contributes most efficaciously to the Christian instruction of the faithful, namely by reason of the mysteries which are commemorated in it, by reason of the readings and chants which it contains, and especially by reason of the sacramental rites by which grace is poured in.

Certainly several of those salutary effects are not proper to liturgy as such: nevertheless even these usually in fact, at least with such great efficacy, are begotten by liturgy alone, either because, so far as most of the faithful are concerned, the collective and social exercise of religion is contained in liturgical worship, or because, as has been said, the principal means of sanctification which the Church uses, under another aspect, are also acts of liturgical worship.

Excesses to Be Avoided. 1. Nevertheless every excess must be abstained from in exalting the merits of liturgy; nor must its ambit be so extended that it seems to comprehend the whole spiritual life both of the universal Church and of individual faithful. For liturgy is public and ritual worship and nothing besides. Therefore whatever does not have the character of a worshipful act and does not consist in rites must wholly be denied to liturgy. But who will seriously deny that very many such works exist both in the spiritual life of the Church and in that of the faithful? Think of the whole office of public teaching or the use of jurisdiction in establishing laws and ruling the faithful: very many works of charity, etc.; but among the faithful, worship of private devotion, and especially the custom of pious contemplation and of examination of conscience; fasts, vigils, and the other exercises of penance, not to speak of many other things which are too manifestly distant from liturgy by the whole heaven.

2. Nor is the name of Catholic piety rightly reserved to liturgy, while outside it a place is conceded only to devotion that is wholly private. For a false supposition underlies this distinction; because not only those things which are exercised publicly in the Church, but all other good works also which are done at the will of or with the approval of the Church within her limits, although they are in some way private, nevertheless, on account of the communion of saints, are truly works of the whole Church and acquire their proper dignity from this. For the publicity of the acts of the Church, in relation to spiritual effects and especially to the communication of merits, is nothing other than a certain sacramental. Therefore the Church is badly defined as a "society of liturgy."

3. But must not at least the whole remaining spiritual life be subject to liturgical worship? Must not this be its center, as they say, so that all other spiritual actions are either preparation for or continuation of liturgical worship? There is someone who affirms this. But this necessity could be defended in some way if liturgy were not only materially (which it truly is) but also formally penance, thanksgiving, ascetical life, etc. For then liturgy would be the same as the public and legitimate exercise of the whole Christian and spiritual life. Nevertheless even then it would have to be demonstrated that the Church proposes that public exercise as one and excellent, so that the private exercise would be excluded or at least the public would always have to be preferred to it. This does not seem able to be said rightly. For in this assertion there lies hidden always the same error by which it is affirmed that only that which is public (*officiel*) is done with the Church and through her.

But moreover, liturgy is not formally penance, thanksgiving, ascetical life, etc., but only worship, and indeed public and ritual worship. But can worship, especially public and ritual worship, be the center of the whole spiritual life? There is no reason for asserting such a thing. For although to serve God is the one end of our whole life and of the Church's life, nevertheless God is not served principally by worship.

Yet again it is not denied that liturgy is of such great importance that its exercise is worthy to be carefully prepared and continued by apt readings and meditations; and this seems to us to be liturgical life. Nevertheless it must be noted that such preparation and continuation is no longer formally the exercise of liturgy.

But at least, even if some coordination only without subordination is admitted between liturgy and the remaining acts of spiritual life, is not liturgy nevertheless, as it were, the exemplar and teacher of the whole spiritual life? Certainly liturgy, since it is an ecclesiastical institution, enjoys immense authority; and on the other hand some unity in our spiritual life is greatly to be desired. But the authority which liturgy enjoys from the institution of the Church has force only insofar as liturgy is worship, not insofar as it is an exercise of penance, prayer, ascesis, etc., since all these things it is only materially. Moreover, the Church never hints that she wishes to propose, by her public worship, an exemplar of the whole spiritual life.

— You ask concerning "liturgical spirit."

And first, what is it? It consists in those dispositions of intellect and will, indeed also of sensibility, which are necessary or useful for performing a liturgical act well, i.e. integrally and worthily. But that it should be done fruitfully pertains at least to the spirit of the liturgy, because liturgy does not formally intend this end. Many things are often attributed to liturgical spirit as if they were proper to it, which pertain to it only materially. Thus that liberty of soul and mind in liturgical meditation, i.e. in that meditation which is exercised in the very performing of a liturgical act, for example in singing the Office. For why could someone not use the same liberty in meditating on the psalms or other passages of sacred Scripture apart from every action of liturgical worship? And so, while the liturgical spirit is altogether necessary, and too often is greatly lacking, in the exercise of liturgical worship itself, outside that worship it must be said not to be required; but individual acts of spiritual life must be done in that manner and with those dispositions of soul which their nature demands for greater spiritual usefulness, always with the authority of the Church preserved.

Article II: On Special Acts of Worship

These acts are devotion, adoration, praise, and prayer.

§ 1. On the First Three Acts

I. Actual devotion is a certain will of promptly handing oneself over to those things which pertain to the service of God. It is acquired by prayers and by consideration or contemplation of the divine perfections and of one's own defect. Per se and principally, it brings spiritual joy, as the fruit of the considered divine goodness and of the promise of aid; accidentally, however, and consequently, it brings sorrow according to God, from consideration of one's own misery and of the absence of the vision of God. Cf. 2, 2, q. 82.

II. Adoration, taken strictly, is the formal exhibition of supreme reverence and the protestation of subjection, in recognition of the infinite excellence and supreme dominion of God. By a broader usage, it is extended to the very veneration which belongs to creatures.

Taken adequately, it comprises, besides interior veneration (through internal adoration), exterior humiliation of the body (through external adoration); the latter aids the interior; from man's composite nature, as it were spontaneously, it accompanies the former, and from the necessity of social worship it is sometimes prescribed.

III. Praise is prayer making clear the greatness of virtue insofar as it shines forth in effects, and especially in benefits.

Hence it is said to differ from honor, because we honor all the good, but we praise benefactors. Therefore it pertains to the office of gratitude which must be rendered to God. Cf. Aristotle, *Rhet*. I and 3; St. Thomas on Ps. 17.

The power of God shines forth in all visible nature; but in no creature more than in the heroic life of the saints.

Praise of the mouth is a part of external worship. For stirring up affections, chant agrees with it especially well, and is therefore most suitably instituted, "that the souls of the weak might be more provoked to devotion" (2, 2, q. 91, art. 2).

§ 2. On Prayer

I. Notion. 1. A twofold description of prayer is proposed: the ascent of the mind to God; the petition of fitting things from God. The former is drawn from the praying subject and from the term of the motion, the latter from the object; the former sets forth more the dignity and sublimity of the action, the latter more its utility and the divine goodness; the former is more eternal, the latter more practical now and accommodated to our present state.

Each notion is well joined by Damascene [1], since there is no ascent to God without petition, no petition made to God without an ascent of the mind to God. For, our present condition considered, our perpetual need of goods which we cannot receive except from God brings this about, that every formal approach of ours to God contains a formal or virtual petition. Indeed, in the perpetual thanksgiving of the heavenly citizens there is had a virtual supplication for perpetual divine

possession; nor is conversation with God conceived where the creature (not a being in itself) does not receive, and God (infinite being, incapable of reception) does not give.

2. Prayer is distinguished as formal and virtual or vital. The former, from a suppliant intention, approaches God; the latter consists in good works, since good works have impetratory force.

It is also distinguished as mental and vocal: not because the former excludes words or exterior signs, but because it is not, as the latter is, bound to words. Vocal prayer is rendered in exterior words by intention; whether the one praying here and now finds words which he utters with a loud or low voice, or whether he follows a formula written at another time by himself or by another. Concerning the essence of vocal prayer cf. III, 39. - Mental prayer is so completed in the mind that there is no professed use of voices or exterior signs. Mental prayer in turn is divided into meditation and contemplation. Meditation strictly is discursive prayer; contemplation, as the fruit of meditation, is a simpler and affective intuition of truth. Contemplation itself can be either ordinary or extraordinary, or mystical. The latter has as its proper note that it takes place with a certain sense of the divine presence: it is the fruit of a new divine grace, distinct from the grace which makes an act supernatural and salutary. From this we pronounce nothing concerning the frequency or rarity of that grace. Cf. our work *Quaestiones de Virtute religionis*, etc., q. 1, c. 2.

3. Their own parts in prayer belong to the intellect and to the will. Yet because prayer pertains to the genus of a certain speech, and by persuasion orders God toward doing something in favor of the one praying, prayer is formally an act of the intellect.

[1] *De fide orthodoxa* III, 24, P.G. 94, 1090.

The Parts of Complete Prayer. From the occasion of the words of St. Paul, "I beseech therefore first of all that supplications, prayers, intercessions, thanksgivings be made for all men" (1 Tim. 2:1), St. Thomas, 2, 2, q. 83, art. 17, finds in every perfect prayer four parts: approach to God through a certain dutiful salutation, which he calls prayer strictly so called; formal petition, which is designated by the name of postulation; exposition of reasons and sacred contestation, which is called obsecration; and thanksgiving for benefits already received, which disposes toward new ones to be granted. These parts are easily distinguished in several prayers of the Church, for example in the prayer of the Most Holy Sacrament: "O God (prayer), who under a wonderful sacrament hast left us a memorial of Thy Passion (thanksgiving), grant graciously, etc. (postulation), graciously, who livest and reignest (obsecration)."

II. The Praying Subject. Christ never prayed servilely, as creatures do who cannot provide for themselves the things which they seek; but dispensatively, by voluntary lowering of Himself, which, by no means repugnant to His human nature, was at the same time an example to us. In heaven, however, He is presented to us by the Apostle as "always living to make intercession for us" (Heb. 7:25). But since He is now in the glory of the Father, and all things have been handed over into His hands, even as man, this is better understood, rather than of formal prayer, of the title of every grace to be obtained, which we perpetually have in His wounds and in His humanity.

That the Blessed Virgin Mary is, for us, by her prayer, the universal Mediatrix of grace, is a persuasion which is more and more rooted in the souls of the faithful, confirmed by several pontifical documents, expressed almost authentically by the proper Mass itself granted, nourished by the

studies of theologians, so that the sweet hope grows day by day that at some time this truth will be proposed to the faithful as a dogma of faith to be believed. The peculiar force which, as Mother of God and our Mother, Mary has for interceding for us is so well known that therefore she has been called suppliant Omnipotence.

The Saints themselves can seek for themselves both the glory of the body and the accidental glory of honors or worship. For us they can obtain every genus of goods, according to the order of divine Providence.

The souls of purgatory, even if they do not know our petitions (which St. Thomas thinks, but it is not certain), seem at least able to pray for the living in common, and especially for those joined to them. Indeed, although they cannot satisfy, they can usefully pray to God that they may as quickly as possible obtain beatitude, by asking some remission of punishment or a certain divine motion by which God may move wayfarers to pray and satisfy for them. Cf. Suarez, *De Religione*, Tract. IV, Lib. I, c. 10, n. 25-28.

Every wayfarer can pray not only for himself, but also for his neighbor, of whom, on account of the bond of charity, he is in some way said to be one.

III. Object. All things are to be sought by us in order to salvation. Therefore an indifferent thing, as such, cannot be the object of an honorable petition. Yet those alone seem objectively to sin who, while asking temporal things, formally exclude the right use of the temporal good. For a thing indifferent from its object can be referred to divine glory. But whoever acts with an honorable intention tacitly does not seek a thing that is indifferent except insofar as it is lawful for him to seek the same. Therefore, rather than that we stir up scruples concerning the thing sought as indifferent, it will be much better that we inculcate the Lord's counsel: "Seek first the kingdom of God and all these things shall be added to you" (St. Luke 12:31); lest, from scant success of prayers, Christians begin to scrape away in their souls concerning prayer and to lead a languid spiritual life. Therefore they should also be admonished that temporal goods are not granted by God except in order to aiding salvation; and that by an excessive affection by which temporal things are sought before other goods, prayer itself is partly vitiated.

Things, however, can be sought determinately, which aids our fervor, or indeterminately, as when we confidently say: "He whom Thou lovest is sick" (Gospel of St. John 11:3).

IV. Terms. 1. Prayer is properly made to God, from whom we expect all goods. In a secondary way, the worship of suppliant prayer is directed to the Saints, that they may pray for us, and on account of their merits God may hear us. Because formal invocation of them is less essential, there is nothing wonderful in the fact that it must be referred to an age of developed Christian religion. But in the present state entirely to neglect it would savor of a certain pride and irreligiosity. Therefore c. 1276 opportunely commands these things: "Before the rest, let all the faithful pursue the Blessed Virgin Mary with filial devotion."

2. The pious work of aiding souls detained in purgatory is not doubted to contribute greatly to obtaining graces: pious alms are thus joined with prayer.

St. Thomas, 2, 2, q. 83, art. 11 ad 3, denies that the souls of purgatory are to be invoked, because they do not know our petitions and are rather in need than themselves helping (cf. n. 181). Yet these

are not certain arguments. Nor does it appear why they cannot pray for the living in common and for those specially joined to them. Cf. Suarez, *Relig*. tr. IV, L. 1, c. 10, 25-28. And without doubt, once received into the eternal tabernacles, they will be grateful to their benefactors.

V. Efficacy. 1. From the divine promise, which is contained in manifest places of Sacred Scripture, prayer, made in the due manner, possesses an infallible efficacy of obtaining. "Ask and it shall be given you" (St. Matt. 7:7; St. Luke 11:9). "All things whatsoever you shall ask in prayer, believing, you shall receive" (St. Matt. 21:22). That it may be made in the due manner, there is required humility, by which, subject to God the Supreme Lord, we desire goods for ourselves according to the order pre-established for us by divine Wisdom; faith, by which we believe God's omnipotence and promises; confidence, by which we do not doubt concerning divine fidelity; perseverance, by which our virtue, especially humility, is exercised, and the defect of individual prayers is supplied; at least initial conversion to God, so that our petition may be sincere. Therefore, since God destines no goods for us as indifferent to salvation, and wills us to be subject to the laws of His supreme and universal Providence, all and only those things can be infallibly obtained by us which are necessary or useful for attaining the degree of heavenly glory predestined for us.

2. It is less established that prayer poured forth for others is of infallible efficacy. Yet the universal force of the words of Sacred Scripture seems to prove this, especially since they expressly commend prayer for others, for example Eph. 6:18, 19; 1 Tim. 2:1-4. But the necessary disposition can be lacking in him for whom we pray. And because the application of prayer to the souls of purgatory seems to be subject to other things than their present disposition, for example to the mercy by which they themselves were commendable while they lived on earth, therefore suffrages for the souls of purgatory do not always free them.

3. **Aids of efficacy.** Since divine Providence has brought us to our state and has prepared for us various conjunctions with others, the more we seek those things which are according to our condition, and the more the persons for whom we pray are joined to us, the more easily we shall be heard. Moreover, that the sanctity of the one praying contributes to the efficacy of prayer is not to be doubted.

4. **Utility of imperfect prayer.** Although a prayer in which some required condition is lacking cannot rest upon the divine promises, nevertheless it is not made useless, since the benignity of God preserves for it some impetratory force [1], and repeated prayers can supply the defect of individual prayers.

[1] Cf. Aertnijs, I, 414, V; Tanquerey, II, 872.

— You ask concerning the necessity of attention and concerning distractions. A certain attention or application of mind is necessarily had, from the fact that someone, from a formal or virtual intention, pronounces prayerful words. Therefore distraction usually signifies not so much alienation of the mind from God as a division of the mind among several things. But the reverence owed to God demands that at least when we pray by profession, the mind be morally wholly turned to Him. But a just proportionate cause, whether of labor through which at the same time we desire to pour forth some prayer, or of the importance of the business itself whose thought comes upon the mind, or of the very utility of the distraction, can take away that irreverence, and therefore the venial sin. Cf. the things said, III, 39, where the threefold attention is also explained, or Tanquerey, II, n. 872.

VI. Necessity. 1. That prayer is necessary to us at least by necessity of precept is certain by faith. For this is demonstrated to us by very clear places of Sacred Scripture, by the word and example of the Lord, and by the exhortation of the Apostles. And the Scriptures so join prayer with necessary goods that they already inculcate a necessity of means, which is more clearly preached in Tradition and admitted by the more common opinion. Yet it is a diminished necessity of means, insofar as it presses, not strictly upon all, but upon most by ordinary law; i.e., according to the doctrine received in the schools, grace immediately sufficient for fully believing or for overcoming grave temptations is available to many by no other way than that of prayer. But who, without great temerity, could presume that he will be immune from great difficulties or temptations?

2. That one must pray frequently in life is effected from the same places of Scripture. For the sacred texts will that in every necessity, concerning every matter, we confidently have recourse to God. How often, however, cannot be defined. The theologians who demand monthly prayer do not demonstrate their intention. Therefore it must be said that this precept is more determined by the laws of the Church concerning hearing Mass, concerning receiving the sacraments, and is abundantly fulfilled by the various offices of Christian life.

3. The same precept obliges accidentally: a) when grave temptations are foreseen or must be overcome: the omission will be one sin, in number and species, with the sin which ought to have been avoided through prayer. For prayer was not prescribed except for avoiding that, so that one precept of not committing such a sin has been violated; b) when, in danger of death, pardon from mortal sin must be obtained; c) when, in a grave calamity of the public or of those joined to us, prayer is shown to be an efficacious remedy which others will neglect (when will these things be established?); d) from an imposed office: the pastor of souls is obliged to prayer by the office itself; those ordained in sacred orders, beneficed persons, together with the office imposed on them by the Church, have the obligation of reciting the divine hours.

For the most part, from a less right cause, the omission of every morning prayer, evening prayer, and prayer before and after bodily refreshment will be venial, although these are not prescribed. Catholic families are very opportunely admonished that these prayers, commended by the pious custom of the Church, not gradually be neglected and passed over. When refreshment is taken in a public place, our regions being considered, it is becoming that a priest or religious not omit prayer. And per se it is also to be recommended to lay persons that, in a manner which is free at the same time from timidity and from arrogance, they preserve the custom. What Mohammedans and many Protestants dare, will Catholics no longer dare?

— You ask, what prayer is to be preferred, whether mental or vocal. Mental prayer does not differ from vocal precisely in this, that the former excludes the parts of voice and body, while the latter excludes interior discourses and affections. For one who prays in the mind is accustomed to show himself praying by the whole habit of the body, and not rarely to break forth into words. Again, without some attention of the mind there would not be vocal prayer. But both prayers are separated by this distinction, that vocal prayer is bound to a definite form of words, while mental prayer is released from this bond.

These things presupposed, vocal prayer alone is adapted to public prayer; and the loftiest thoughts can be revolved in vocal prayer. Therefore, in the first place, each one ought to place before others

that prayer by which he himself is more aided. Yet that prayer which is directed by the mind is preferable and per se more useful: it permits to the nobler faculties an unimpeded abundance of explaining themselves; it is prayer in which the voices serve the affections of the mind, and have only that use which agrees with the present desire or need of the soul, rather than a manner of praying which follows an exterior norm, fixes the acies of the intellect at least in part upon words, so that the superior faculties can give themselves less fully to their acts, and in some way join themselves to the words as attendants; or are easily impeded by the pronunciation of the words. Add that mental prayer is accustomed to be more laborious, so that the merit of greater bodily affliction is added.

Concerning Mystical Prayer. 1. **Notion.** Mystical prayer denotes contemplation of God or of heavenly things, full of affection, extraordinary and ineffable, with a certain sense of the divine presence, and indeed an intimate one. Although not all require this sense as essential, nevertheless in that sense by which mystics are said to experience divine things, we think there is a specific note by which mystical contemplation is proved to differ from common contemplation.

It is commonly known that mystical contemplation itself is distinguished by various degrees, of which the supreme is spiritual marriage. Moreover, mystical facts or phenomena which accompany that contemplation are called, some exdeic, insofar as they have as term something created, such as visions themselves, revelations, ecstasies; others are endeic, which attain God Himself or a closer conjunction with Him. The former pertain to graces gratuitously given, which are neither the object of merit nor contribute to sanctity; while the latter, in some degree, are offered as a sufficiently common reward of peculiar fidelity and are very useful for sanctity. Therefore the former are neither to be sought nor desired, but rather humbly to be fled. Nor must one strive indiscreetly for perfect contemplation [1]; yet for this a man can laudably dispose himself by great purity of heart, profound humility, and ardent charity.

Every mystical state indeed is the fruit of its own grace, distinct from the grace which effects a supernatural and salutary act; but a remote general aptitude, not to say universal, for obtaining that state in some degree seems rather to be admitted.

Let it be enough to have intimated these things concerning prayer; for more, cf., for example, in *Quaestiones De virtute religionis et pietatis*.

[1] Alvarez de Paz, *De inquisitione pacis*, b. 5, p. 2, c. 13.

Summary

I. Concerning worship. By the general name of worship all acts of the virtue of religion are designated, since by them the service of God is integrated. The worship of *latria* is distinguished, which is proper to the divine Majesty; of *hyperdulia*, which is rendered to the Blessed Virgin Mary; and of *dulia*, by which the Saints are commonly honored. Except sacrifice, which pertains to public latreutic worship alone, other external acts, according to the intention and circumstances of the one honoring, can manifest *latria* or *dulia*.

Worship is interior and exterior. Exterior worship can be private and public: public worship is rendered in the name of the Church, by persons legitimately deputed for this, or by acts which from the institution of the Church can be exhibited only to God, the Saints, and the Blessed (c. 1256). Public worship is called liturgical when it is rendered by a rite or ordered mode prescribed by

legitimate power (by Christ or by the Church). The norms of the material execution of sacred rites are called rubrics. The liturgical spirit, or the study of accommodating personal devotion to the properly social devotion which belongs to liturgy, is greatly to be commended, yet so that it not be preached as exclusive, and not depress private devotion. Finally, he leads a liturgical life who is assiduous in celebrating liturgical acts and girds himself for them by private spiritual exercises.

With public worship today only these can be honored who, being prior to Alexander III, have been described in the martyrology, or who by decree of the Holy See have been numbered among the Saints or Blessed. Yet the immemorial worship rendered to Servants of God who died before 1534 can remain in its state. (That time is not taken mathematically or rigorously, but morally.)

Only those Servants of God can be called Venerable whose martyrdom or heroicity of virtues has been proved. Private worship is honorably attributed by someone to him whose sanctity is morally certain to that person. Canonization, but not beatification, contains an infallible decree. Therefore the worship of the Blessed is circumscribed by place and mode. Absolute worship is terminated at persons; relative worship at things which, on account of connection with persons, participate their sanctity. Such are relics and images: these we can immediately honor on account of the person; just as we can, without any honor rendered to the image itself, merely use the image for honoring the person.

To the Ordinary belongs the delegable power of solemnly blessing an image which is honored with public worship; nor can an unusual one be placed in sacred places without the license of the Ordinary of the place. Per se, without an authentic document, relics cannot be honored with public worship in churches, unless they have been endowed with ancient veneration and it is not established that they are false.

Worship is distinguished as *latria*, which is exhibited to the divine majesty alone, and *dulia*, which is exhibited to the Saints. The singular dignity and sanctity which divine maternity conferred upon the Virgin Mother of God gives place to the worship of *hyperdulia*. Except sacrifice, which is proper to the worship of *latria*, the other external acts, according to the intention and circumstances of the one honoring, can manifest *latria* or *dulia*.

II. Concerning the acts in species. 1. Devotion is defined as a certain will of promptly handing oneself over to those things which pertain to the service of God.

2. Adoration, taken strictly, is the formal exhibition of supreme reverence; by a broader use of the word, creatures also are adored. Taken adequately, it is interior and exterior: this agrees with our nature and is sometimes prescribed by the necessity of social worship.
3. Praise, by which we profess, internally or externally, the beneficent perfection or goodness of God, is a part of gratitude owed to God. Expressed by chant, it aids the devotion of the weak. By a broader use of the word, the greatest praise accrues to God from the promoted perfection of the rational creature.
4. Prayer. a) From the subject and term it is called: the ascent of the mind to God; from the object: the petition of fitting things from God. It is distinguished as formal, by which, from a suppliant intention, God is approached, and virtual or vital, which the good works of him who

does not refuse to pray contain; mental, which is not bound to words, and vocal, which is rendered in exterior words by intention.

Mental prayer is divided into discursive meditation and intuitive contemplation, which can be ordinary or extraordinary, or mystical: mystical is with some sense of the divine presence. Vocal prayer is divided into private and public. - Although intellect and will intervene in prayer, prayer is nevertheless formally an act of the intellect. - Distraction, insofar as it merely denotes division of the mind among several things, does not take away the substance of prayer, at least of vocal prayer; yet if it is voluntary, it derogates venially from the reverence owed to God, unless a proportionate cause excuses it. - Because in moral estimation attention is judged to persevere, he who is involuntarily distracted is sometimes, rather improperly, said to be virtually attentive. Nor for vocal prayer is it necessary that the one praying be able to hear himself.

b) Since prayer contains confession of one's own subjection and recognition and praise of divine excellence, it is of itself a meritorious act of religion.

c) Complete prayer contains approach to God (prayer more strictly so called), postulation, obsecration or contestation of motives, and thanksgiving for benefits already accepted (1 Tim. 2:1).

d) Not only wayfarers pray, but also Saints, the souls of purgatory, and, less properly, as it seems, Christ glorious and reigning.

e) The object of prayer. Whatever can pertain to salvation can be sought for us or for others, but not indifferent or temporal things as such. For as such God has by no means ordered them to us.

f) The term from whom it is obtained is God alone; the term through whom is Christ; and, on account of the merits of Christ, also the Blessed Virgin and the Saints.

g) Efficacy. Already honorable per se and of some efficacy, prayer made in the due manner has, from divine promise, a certain infallible efficacy of obtaining for us the things which, according to the ordering of divine Providence, conduce to our salvation. This efficacy seems also to be extended to prayer offered for others who are disposed. Prayer made in the due manner requires humility, faith, confidence, perseverance, and at least initial conversion to God. According to the dignity of the one praying, according to the quality of the prayer, and according to the conjunction of the one praying with him for whom he prays, the efficacy itself of prayer varies in degree.

h) Necessity. By very clear places of Scripture the precept of prayer is so demonstrated that it is certain by faith. And the Scriptures so join prayer with necessary goods that they inculcate at least a diminished necessity of means, which the more common opinion reads in Tradition. That is, grace immediately sufficient for fully believing or for overcoming grave temptations will be able to be at hand for many by the way of prayer alone. Most, however, have great difficulties to overcome, so that prayer becomes for most a means necessary for salvation. How often one must pray cannot be defined; but the precept of frequently praying is abundantly fulfilled by the various offices of Christian life. The precept obliges accidentally when grave temptations are foreseen or must be overcome; when, in danger of death, pardon from mortal sin must be obtained; or, if that is ever established, when a grave necessity of the public or of those joined to us could be averted by the prayer of someone alone; finally, insofar as it enters into the office of one's state. Although morning prayer, evening prayer, and prayer before and after bodily refreshment are not properly prescribed, for

the most part, in the concrete, complete omission, on account of a less right motive, will not lack venial fault.

i) For each one the better prayer is that by which he is more aided; yet per se mental prayer is more excellent, insofar as, bound by no words, it permits a freer direction to the superior faculties.

k) The mystical state, which can be called a certain affective suffering or experience of divine things, although it demands a special grace of God, seems, in some degree, less prodigious, remotely offered to most, not to say all; and, because it is very useful for sanctity, it can be piously and humbly sought, and prepared for dispositively by the exercise of virtues. But the added rare graces gratuitously given, which tend not to a closer conjunction with God but to some created thing, as a vision or revelation is, are not to be desired but humbly fled. Moreover, in ecstasy itself, man continues freely to love God and to merit, and implicitly seeks all fitting things from God.

Chapter II: On the Offices Which Are Connected with an Oath

Article I: The Notion, Division, and Morality of an Oath

Notion and essence. 1. An oath is "the invocation of the divine Name as witness of truth" (c. 1316). It can be explicit, which is expressed in set words, or tacit, as if, as a sign of an oath, you touch the Gospel, or sign a formula. He who of his own accord signs such a formula by which he is judged both to declare certain things and to confirm them by oath, in reality lies or swears feignedly, unless he has the intention of swearing; but he who is compelled by law or by public authority will then lie only if he is lawfully commanded. One who unlawfully commands formal adherence to his intention or order cannot reasonably hope for it for himself, and therefore cannot consider such a subscription as sworn.

The intention alone of swearing suffices that you swear before God; but that you swear before men, suitable signs of the intention are further required. Doubts will of themselves be solved from the common acceptance of the words. The common use of words also begets a certain presumption in the internal forum. Here, however, in doubt one will answer in favor of liberty.

2. Suitable formulas are: I call God to witness; I invoke God as witness; so may God help me.

The word alone, "I swear," would indeed of itself suffice, but from common usage it does not signify an oath unless it answers to an oath that has been requested. Often also, although by accident, he is not judged to swear who says: by the Catholic faith, by the holy Gospel.

3. Unsuitable formulas are of themselves: God knows, - God will testify in His own time, - I speak before God, - God knows all things, - God sees my conscience, - God knows that I do not lie; because these are judged to be uttered only narratively, without invocation of God, unless something else is gathered from the circumstances.

More absolutely unsuitable are the formulas: Truly, certainly, in truth, on the faith of a good man, by my faith, on the faith of an honest man, of a good Christian, of a priest, of a king, by my conscience, upon my conscience; by these one merely declares that he speaks from the dictate of conscience and from knowledge of the truth.

From usage, these express only a strong affirmation: I expose my head, let my ears be cut off, unless.... Other sayings in the manner of imprecation will more easily be an oath, at least when the event is designated in which we are accustomed to recognize the hand of God. Therefore an invocation is quite easily had: may I be struck by lightning; may I fall dead unless.... But if an execration or choice of evil were had, a new species would be added.

The same must be said of comparative words: it is as true as the sun shines, as God is, as Christ is in the sacrament, as the Gospel is true; he is as innocent as the Blessed Virgin, etc.; these would be blasphemous if anyone wished to insist upon equality. If at the same time they affirm false things, they contain a lie, and where the name of God is pronounced, a vain usurpation of that Name.

Nor today is he judged to swear who says "by my soul." Although one can swear by the nobler creatures, if He is understood who is peculiarly present in them, for example by heaven, by the angels of God, etc.; today the use of such formulas is rather rare. - Since the Gospels represent Christ, to touch the Gospels is to touch Christ; to swear by the Gospels is to swear by Christ.

4. The invocation of God, which pertains to the essence of an oath, consists in this: that the one swearing, so far as is in him, desires and wills that God testify or confirm as true that which he swears (if at any time it shall please Him), and at the same time accepts divine punishments or divine vengeance if he lies, as the words prove: So may God help me....

Wherefore the philosophy of an oath is this: he who calls upon God in confirmation of falsity gravely derogates from the reverence of God and exposes himself to divine punishments; a religious man is not judged to will to do these things; wherefore, by such interposition of divine authority, he himself confirms his own statements.

Division. 1. From the exterior form, they distinguish a verbal oath, which is contained in words; a real oath, which is contained in an action, for example of raising the fingers, touching the cross, the Gospels; and a mixed oath, which is composed of both signs.

2. From the very force of the formula, it is invocatory or contestatory, and execratory or imprecatory. By the former God is simply invoked as witness; by the latter He is expressly at the same time called upon as avenger of falsity, whether one exposes himself or another beloved person, for example a son, to punishments. Since no one is accustomed seriously to imprecate evils from the heart upon himself or a friend, and every oath exposes the one swearing to divine punishments, that false oath does not seem, at least practically, to differ in species from a simple false oath.
3. From the object, it is distinguished as assertory and promissory. By an assertory oath past or present things are affirmed or denied; by a promissory oath at the same time a present intention is affirmed, and a future deed is promised.

To the promissory oath is referred the comminatory oath, by which someone swears thus, for example: by God, I shall strike you unless....

A promissory oath can be absolute and conditioned.

4. Finally, from the rite, an oath is distinguished as simple and solemn; the latter is made by a definite rite before a Prelate, judge, notary, etc. - It pertains to the canonical rite that it be made personally: "An oath which the canons require or admit cannot validly be furnished through a procurator" (c. 1316 § 2).

Judges sometimes are ignorant of the proper force of an oath, so that they do not formally swear when they seem to swear; or sometimes they think a certain rite essential, for example really raising the fingers, so that if they do not raise the fingers rightly they think themselves immune from perjury. These things are to be observed by a judge; but by a priest they must be untaught.

Moral judgment. 1. An oath, furnished with due conditions, is honorable and praiseworthy. For it is an act of religion, since it contains a profession of divine truth, authority, and providence. But the

words by which the Lord seems to condemn every oath are understood by tradition as concerning the reprobation of the evil custom of mixing oaths into every hour and occasion. That honesty is of defined faith.

2. The conditions of an honorable oath, moreover, are customarily expressed in the three words which the Code itself used, when c. 1316 § 1 says: "It cannot be furnished except in truth, in judgment, and in justice." a) Truth demands that you utter those things which you think to be true with that certitude which the solemnity of the thing manifests. Wherefore it is not licit to affirm as certain or simply that about which you doubt. Quite commonly, with St. Alphonsus, L. 4, n. 148, they say that moral certitude is enough for you to confirm a matter by oath. But, since moral certitude is not indivisible, that must be accepted cautiously. Let us rather say that such certitude is required as, for the circumstances, with the oath also considered, is reasonably expected by the hearers; or such as is tacitly affirmed with the thing itself, in these circumstances. For an oath is furnished more as a sign of veracity than of the truth of the thing; it properly confirms things as they are said, not as they are (2. 2, q. 89 art. 1). Hence a stricter certitude is required in the judicial forum, because of the gravity of the consequence. Wherefore what you know from another's report must be testified as received from another. Likewise, where you swear in particular that something is true, the thing must truly be established for you. In a prolix discourse, on the contrary, it is less necessary that you be so certain about the individual narrated points, even secondary ones; then by the oath you rather confirm the sincerity of your mind. But certitude of a future deed, in a promise, is of itself less established. It is enough that you think what you promise to be placed in your power.

Insofar as equivocation itself or defensive words are licit, it will be licit, if there is a just cause, to confirm the same by oath. Where they are prohibited under grave sin, one will sin gravely by such an oath.

This condition of truth is required under grave sin in an oath insofar as it is assertory, nor does lightness of matter excuse from grave sin.

b) Judgment requires that an oath be made with discretion, prudence, consideration, and reverence, and with sufficient utility. By every serious cause this condition is fulfilled, and its defect is only venial, like a vain usurpation of the name of God.

c) Justice is understood differently in an assertory oath and in a promissory oath. - In an assertory oath, a narration of a thing which you cannot licitly report, at least under oath, is said to be opposed to justice. Of itself that defect is venial. It would be mortal if you wished thereby to conciliate belief for grave detraction, or, as we may say more generally, to use divine authority as a means of iniquity. - In a promissory oath, where it has its proper seat, the condition of justice forbids you to swear that you will do what is not licit. And when grave sin is in question, there is committed a mortal irreverence of abusing divine authority for evil. This malice seems to remain even if the question is of committing a venial sin. Yet the benign opinion, which is that of several distinguished doctors, Lessius, Sanchez, Suarez, is probable. It will more easily be admitted not to be grave when the matter is opposed merely to evangelical counsel, as if you swear that you will not enter religion, that you will not give alms.

N. B. Concerning an oath requested from one who is going to perjure himself, cf. what was said at n. 124, 2; concerning a feigned oath, cf. here immediately, where we treat of a promissory oath.

Article II: On a Promissory Oath

What is contained in that oath. As is proved by the very notion, a promissory oath regards the truth both of the present intention and of the future fulfillment. God is called as witness of the present intention; wherefore, under this respect, a promissory oath does not differ from an assertory oath. As to future fulfillment, the interposition of divine authority has this effect, that from reverence toward God, and therefore from the virtue of religion, the one swearing must fulfill what he promises or proposes. Thus the ratio is shown to be akin to a vow; yet because the promise itself is not made directly to God, it recedes from the nature of a vow, and its violation is less grave than the violation of a vow (2, 2, q. 89 art. 8). At the same time the notion of an oath carries this with it, that God is called upon as witness, not indeed of future truth - for, since impediments can arise, that, at least absolutely, cannot be done - but that He is called upon as witness of constancy. But because constancy is not desired in him who is lawfully impeded or dispensed, nothing is done against the oath by one whom either excuse assists. And because God is the avenger of perjury, both notions composed together, i.e., of constancy owed from reverence toward God, and of the invocation of God as witness of that constancy, have the effect that a certain security concerning the execution itself is obtained through a promissory oath. This security can be called a divine quasi-suretyship.

Thus we seem able to reconcile the three modes by which a promissory oath as such is conceived: a) God is invoked as witness of future truth (cf. 2, 2, q. 89 art. 7); b) the faith itself is bound to God, so that you are bound almost from a vow (d'Annibale, II, 25); c) God is called metaphorically a quasi-surety, insofar as the intention of doing can no longer be changed without irreverence offered to God, and that invocation of God supplies a certain security of execution (most authors after Suarez, *Rel.*, Tr. 5, Lib. 3, c. 16, n. 10-13).

The Code, c. 1317, simply has these words: "He who freely swears that he will do something is held by a peculiar obligation of religion to fulfill what he has confirmed by oath."

That oath can accede to a simple purpose, which then must be observed from reverence toward God; or to a promise obliging from fidelity, which then, from the same reverence, must be observed more carefully; or to a vow, so that a double obligation of religion has arisen; or to a contract already of itself obliging from justice: in which case a right has been acquired by the third party and fortified by the protection of religion.

The sworn fulfillment of a contract. The parties can be moved by a twofold intention to swear to the fulfillment of a contractual promise, or a promise obliging of itself from justice. Either, thinking the promise valid, they intend merely to increase the obligation already undertaken by the obligation of religion; then, from the very intention of the parties, the oath must follow the nature of the act; or, conscious of a defect or vice, they will to substitute an obligation of religion in the place of an obligation of justice; and then, unless from the nature of the thing or from the prohibition of law the object of the oath is illicit, an obligation of religion arises from the oath; and, unless positive law or harmful circumstances have introduced more, this alone binds the parties.

N. B. Formerly, an oath having been added, agreements had to be judged in the ecclesiastical forum; and acts which otherwise would have been destitute of action were confirmed civilly.

"An oath extorted by force or grave fear is valid, but it can be relaxed by a Superior" (can. 1317 § 2). For the Church did not will to invalidate such an oath, lest, by alleging the excuse of fear, too frequent an occasion of perjuring be given (Keiffenstuel in L. 1, t. 40, n. 58. 59). - An oath extorted by error or fraud will be valid or not, according as the error affected only circumstances of lesser moment or was substantial.

An oath of doing a bad thing, or a vain thing, or a useless thing, or a thing directly contrary to the evangelical counsels, or something so indifferent that it is made honest neither by the end nor by circumstances, produces no obligation. For an oath cannot be a bond of iniquity, or bind us to vain and idle things, since obligations of this kind impede greater goods.

Wherefore, canon 1318, § 2 warns us that acts which tend directly to the harm of others or to the prejudice of the public good or of eternal salvation acquire no force from an oath.

Yet a valid promise or agreement can be confirmed by oath, by which someone is prohibited from taking, or rather professing, the way of the evangelical counsels, at least for a time or without Pontifical dispensation. Cf. n. 200.

The oath of a minor. Although, from c. 1317, an oath furnished neither by force nor by fraud, by which someone renounces a private good or favor conceded to him by law, must be observed as often as it can be observed without sin, that must be understood insofar as the one swearing is capable of such renunciation. Wherefore, if a minor, still a minor, has sworn that he would not rescind a void or rescindable agreement made by him, since our law, in view of the common good itself, renders that confirmation void, he seems strictly to need no dispensation. And indeed a dispensation, if it seems to have to be given, removes no acquired right, so that it can be granted by any suitable priest. If, I say, it seems to have to be given, because any priest can declare the emptiness of the act.

He swears feignedly or simulatedly who either inwardly dissents in mind from the words which he utters, or does not will to undertake the obligation of religion. Concerning this matter there is proposition 25 condemned by Innocent XI: "with cause it is lawful to swear without the intention of swearing, whether the matter is light or grave."

And in reality that fiction contains a lie with vain usurpation of the name of God. This is of itself venial; but it would become grave: a) in contracts about a grave matter, because of fraudulent deception; b) when from a grave precept, as in a legitimate judgment, an oath is imposed: then one would be pressed at least by the obligation of religion; c) when one thus swears feignedly without the intention of fulfilling: because, since the name of God is invoked exteriorly, this character of exterior perjury is injurious to God almost as exterior blasphemy is. So rather with Suarez, *Rel.*, tr. 5, L. 3, c. 17, n. 3. 4, than from the subtle reason of Sanchez, *Decal.* L. 3, c. 6, n. 8-11.

But when the stain of lying is absent from the fiction, as when it is requested unlawfully in circumstances which exclude a serious and sincere action, a feigned oath seems able to be excused by a grave cause. Cf. Lugo, *Paen.* d. 16, n. 211; Lehmk. I, 556.

A feigned and invalid oath introduces no obligation of religion as such. Yet easily, to prevent scandal or harm, it will have to be executed.

He who, terrified by the threats of a robber, has sworn that he will give him a sum of money, although, because of the rescindable contract, he is held by no obligation of justice, must and can be dispensed from the oath (c. 1317 § 2): which was controverted before the Code [1]; but he could also pronounce the words without the intention of swearing, so that the oath itself is null. But if the contract is null, for example because it is invalidated by civil law, then relaxation of the oath seems superfluous.

[1] Cf. e.g. Lehmk., I, 564. St. Thomas follows the severe opinion, 2, 2, q. 89 art. 7 ad 3.

He who, in favor of someone or of certain persons, has absolutely sworn that he will furnish something, so that, for example, from their consent a right has been acquired by them, is held to fulfill it as long as it is honorable, even if it impedes a better good, for example entrance into religion. Nor can he himself commute that oath into something better, but he must seek a dispensation. Hence is also explained c. 542, § 1, which declares invalid the reception into the novitiate of a candidate who is bound by an oath by which, for a definite time, he is held, by institution of the Holy See, to a mission or diocese. But in similar oaths there is easily understood the condition, "unless I shall have been called to the state of perfection." Cf. Lugo, *Iust*. d. 21, n. 67. 73; Nilles, *De libertate clericorum religionem ingrediendi*, n. 43. 44 and p. 120. 121. Wherefore, in the oath of a mission, an express promise is made of not entering religion without dispensation of the Holy See.

A promissory oath must be interpreted in the same way in which a promise not sworn would be explained. Wherefore, one who swears that he will observe the decrees and rules or statutes of some congregation, university, or chapter, is judged to have sworn not so much the statutes themselves as due subjection to those laws. Wherefore that oath is understood: a) of statutes already issued, not to be issued; b) as long as and insofar as they are in force by use; c) under grave sin, under light sin, under counsel, under penalty, according as the thing itself or the law in force demands it.

Concerning interpretation c. 1321 has this: "An oath must be strictly interpreted according to law and according to the intention of the one swearing, or, if he acts fraudulently, according to the intention of him to whom the oath is sworn." This is a most apt rule of the external forum (1). The intention of him to whom the oath is sworn will have to be gathered from the circumstances or from another demonstration. In the internal forum, the obligation of the oath does not exceed the intention of the one swearing. Yet the one swearing will have to repair the harms of harmful fraud.

An oath concerning civil constitutions does not affect laws contrary to divine or ecclesiastical law. If laws of this kind are brought forward or urged, a clause excluding them must be added to the oath. But if they lie as though buried, the oath is now of itself judged reasonably circumscribed by laws properly in force. Cf. Lehmk. I, 568.

The obligation of fulfilling a promissory oath is certainly grave if the object itself of the promise must be considered grave. But if it is light, grave authors, such as Lessius, *Iust*. etc. b. II, c. 42, dub. 5, judge the obligation to be under mortal sin, because God is invoked as witness of falsity. Lessius, however, concedes the probability of the more benign opinion, which Suarez then confirmed by his authority, *Rel*. tr. 5, Lib. 3, c. 16, n. 15-19; because a lie would be lacking if, when it was sworn, the intention of fulfilling the promise had been had, so that God was merely the surety of a light obligation. Yet we confess that, for the reasoning of the Excellent Doctor to be apodictic, it is necessary that you wholly omit that which seems sufficiently to cohere with the nature of an oath:

that God was invoked as witness of constancy. More easily, although Suarez does not admit this, l. c. n. 8, we shall concede with most authors that one sins lightly who has omitted a moderate part of a grave object promised, because God was assumed as witness of substantial constancy, not of perfect constancy. But practically, in no light matter will the obligation of a sworn promise have to be urged under grave sin.

From c. 1319 itself, the obligation introduced by a promissory oath ceases: by remission proceeding from him for whose advantage it was sworn; - by substantial change of the thing, or if, the circumstances having been changed, the thing becomes bad, wholly indifferent, or impedes a greater good (here, however, as was said above, acquired rights must be attended to); - when the final cause, or the condition under which perhaps the oath was given, is lacking: for example, when the poverty of him to whom you had promised alms ceases, or when he dies for whose health you had promised a pilgrimage; - by irritation, dispensation, commutation. Moreover, all who can relax vows are permitted by canon 1320 to remove oaths also, by the same reason and in the same way.

Appendix: On Adjuration

What it is. Adjuration is an imperative or deprecative demand, made by interposing the name of God, of the saints, or of a sacred thing (2, 2, q. 90). Toward superiors or equals it is made only deprecatively; toward inferiors it is made also imperatively; indeed, toward the demon it cannot be made except imperatively, and that he may not harm, not however that he may teach or that we may obtain a good from him. - The adjuration of an irrational creature is directed to him by whom they are moved: deprecatively to God, imperatively to the demon.

What sort is licit. Private adjuration can be made by anyone, and it is licitly made as an argument of an honorable petition. A false pauper who asks alms in the name of God does not sin on this head except venially.

Solemn adjuration is had chiefly in exorcism properly so called. It, without the special and express license of the Ordinary, is forbidden to be made [1]; and the license is to be committed only to a most approved priest. Exorcisms, however, can be made upon non-Catholics themselves or excommunicates. Concerning true possession by the demon, it must prudently be established (cf. cc. 1151-1153). The Roman Ritual must be observed. An exorcist sins only venially who during the exorcism asks a few things out of curiosity but imperatively.

Nevertheless the use of the exorcism of Leo XIII is permitted to all (cf. *Rituale*, appendix).

[1] At least publicly, says Prummer, *Manuale*, q. 352, nota.

Summary

I. Oath. 1. An oath "is the invocation of the divine Name as witness of truth" (c. 1316). That is, the one swearing, so far as is in him, invites God that, before His infinite knowledge and veracity, He may will to confirm his statements. But because a religious man is not judged to will to derogate from divine reverence, nor a prudent man to expose himself to divine punishments, therefore he himself confirms his statements before men by oath.

The invocation of God can be explicit or tacit. No one swears before men unless he manifests by suitable signs the intention (which suffices for you to swear before God). And usage can make

unsuitable a formula sufficient of itself. He does not swear who is judged merely, with great force, for example by the species of imprecation against himself, or by using comparative words, to affirm certain things.

2. It is distinguished, from the exterior form, as verbal, real, mixed; - from the force of the formula, as invocatory or contestatory, and execratory or imprecatory; - from the object, as assertory and promissory, which can be absolute or conditioned, and to which the comminatory oath is referred; - from the rite, as simple and solemn. Thus it is essential in the canonical rite that one swear personally (c. 1316, § 2).

3. Of defined faith is the honesty of an oath clothed with due conditions; and it is demonstrated by the fact that it encloses in itself a religious profession of divine truth and Providence. The conditions, however, are: a) truth, that the one swearing be truthful, and therefore that the things which he affirms be established for him by such certitude as, for the circumstances, is reasonably expected: in an oath, insofar as it is assertory, this condition is always required under grave sin; b) judgment, that a discreet use be made of an oath, and therefore that one swear only because of sufficient utility, which every serious cause supplies. This condition is of itself demanded under venial sin; c) justice, which, properly pertaining to a promissory oath, forbids promising those things which are forbidden to be done: and this must be avoided at least in a grave matter under mortal sin. In an assertory oath, this condition is judged to have been lacking if someone narrated what he is prohibited from reporting, at least under oath: this of itself is venial.

4. A promissory oath affirms a present intention of fulfilling the things promised; and thus it is assertory; and further it supplies a certain security of that execution, because of reverence toward God, so that it introduces a peculiar obligation of religion of fulfilling what has been promised. It almost always accedes to a promise, either to increase the obligation, in which case it does not oblige except as much and insofar as the promise obliges; or to remove the nullity of the act or promise, and then, unless that confirmation itself is illicit or, from positive law, impossible, there arises an obligation which, of itself, is of religion alone; by accident, because of harmful circumstances or positive law, it can also be of justice. An obligation of religion alone can, unless an acquired right stands in the way, be removed by dispensation. A dispensation requires a just cause in order to be valid. A just cause is had if the oath has been extorted by force or fear. But if the obligation of religion confirms a right acquired by another from an accepted promise, then dispensation from the oath is said to injure that right, insofar as it removes a certain security. In the same way in which a promise not sworn is to be explained, a promissory oath is to be explained; and therefore strictly, according to law and the intention of the one swearing.

If the one swearing acted fraudulently, c. 1321 wills, at least in the external forum, that the oath be explained according to the intention of him to whom it is sworn.

To swear feignedly will then only be licit when it is done without a lie, and with grave cause.

Neither a feigned nor an invalid oath obliges as such. The obligation ceases by remission, by substantial change of the thing, by failure of the final cause or condition, by irritation, dispensation,

commutation; but by whatever power you can use over vows, by the same you can use over oaths, from c. 1320.

5. Adjuration, or an imperative or deprecative demand, which is made by interposing the name of God, of the Saints, or of a sacred thing, can be made privately by anyone; public adjuration is permitted only according to the norms of the law which was passed chiefly concerning exorcism. Toward Superiors or equals it is made only by deprecation; toward inferiors it is made also imperatively; toward the demon it cannot be made except imperatively. The exorcism published by Leo XIII can be used by every priest, from the appendix of the Ritual itself.

Chapter III: On the Offices Which Are Connected with a Vow

Article I: The Notion, Conditions, Division, and Utility of a Vow

I. What it is and with what conditions. A vow is "a deliberate and free promise, made to God, concerning a possible and better good," c. 1307 §1. (Cf. 2, 2, q. 88.)

1. A promise, therefore not a mere purpose. The criterion of distinction is not taken from the word alone, "I purpose" or "I promise," but from whether one intended to assume a special obligation or not. Hence doubts in this matter will have to be solved by the question: "Did you will to oblige yourself before God?"; and in doubt, the minimum is to be held.

2. Deliberate, with at least that deliberation which is sufficient for sinning mortally. Nor is every age or every deliberation sufficient for mortal sin sufficient for every vow. For he sins mortally who has known the gravity of the guilt, although he has not weighed the magnitude of the sin; but in order that you spontaneously assume an obligation, it is necessary not only that you know what an obligation is, but that you have perceived sufficiently clearly the quantity of the object [1]. Thus excellently Ballerini-Palmieri, t. 2, tr. 6, n. 605. From a sudden movement of the soul, from a custom such that the tongue anticipates the mind, sometimes from the heat of anger, either consideration or deliberation can be impeded. If a solidly probable reason suggests that there was only half-full deliberation, it is licit to answer in favor of liberty. With such a reason excluded, a vow made after the seventh year is presumed deliberate. Minds vexed by a scrupulous obsession of vowing are to be ordered by the confessor to care in no way for vows which they think they have made. Cf. I, 85 and 382. - Because direct deliberation is lacking, vows made in drunkenness do not oblige.

3. Free. For "a vow made through grave and unjust fear is null by the law itself." Thus at least from the positive disposition of c. 1307 §3. In the external forum, it is not presumed that light fear gave cause to the vow. If someone, from light but unjust fear alone, and for no other reason, has vowed, the vow probably is not valid, because God is not judged to accept such a vow, lest He pave a way for unjust coercion. Yet this is controverted. But when fear is not extrinsic or not unjust, nothing stands in the way of the value of the vow.

Error concerning the substance of the promised matter: the one vowing thinks that a chalice which he vows to be golden is silver; - concerning a substantial condition, that is, one so implicitly supposed that otherwise the vow would never have been emitted: the thing promised is of twice greater price or is far graver than it was estimated; - concerning the final cause: the vow is made for the health of a person who is dead or was not sick; - errors of this sort make the vow null, since free consent is lacking. Indeed, any error which has given cause to the vow is of itself sufficient that you be judged immune from the obligation. Nevertheless, excepting properly substantial error, error does not vitiate religious profession. For both private and public good demand that those things which constitute a firm and irrevocable state should not easily waver and should be liable to few conditions. Moreover, the will of the one professing is judged to have accommodated itself to the nature of the thing, and therefore to have held the profession ratified, notwithstanding other errors. Ignorance or

error concerning sexual matters also vitiates profession less: both because the force of that vow, as excellent, approved by God and the Church, emitted by many, and containing a renunciation of certain delights, is sufficiently apprehended through true elements; and because, as the young man is disposed by fervor itself, knowledge of the carnal act would not change his mind. For then he does not experience those grave and troublesome temptations which afterward suggest repentance for the obligation undertaken to certain less fervent persons. Although it is regularly expedient that those who profess the religious state be sufficiently instructed concerning the matter, and be warned that grave difficulties can arise afterward.

4. Made to God. A vow is properly made to God, and is an act of latria. But the cause of a vow can also be the honor which we thus render to the saints, while their worship impels us to acts of religion; just as we can promise certain things to God in order to obtain that the Saints be more honored: for each reason the vow is made in honor of the Saints. We can also confirm by a vow a promise made to a Saint (2, 2, q. 88 art. 5 ad 3).

Finally, nothing prevents us from promising to the Saints themselves, simply or conditionally, certain honors or services [1]. Then an obligation of dulia or hyperdulia arises, distinct from a vow, yet nevertheless analogous; this more approaches the obligation of a vow than the debt of human fidelity, and therefore remains grave in its genus. Cf. *Quaest. de religione*, 137.

5. Concerning a good. For a promise of an evil thing can neither honor God nor be acceptable to Him.
6. Concerning a possible good. For an impossible thing cannot be intended or promised efficaciously. This also seems to have to be transferred to those things which are morally impassable, because that obligation, as in itself harmful to the soul, cannot be acceptable to God or honorific to Him.

Here, however, prudent discretion is needed. The reason is well valid when someone directly vows those things which he cannot physically or morally carry out. Wherefore a vow of avoiding all venial sins is not valid if it is so understood that, once one sin has been committed, the vow itself ceases to be. For to avoid all venial sins is not now in our power without an extraordinary privilege; nor is sufficient utility discerned in such a vow. But, as it seems to us, they pronounce too absolutely who say that such a vow is not valid even if it merely confirms the obligation which we all have of avoiding every sin: an obligation which perseveres even after sin. For, as Suarez excellently observes, *Relig.* tr. 6, lib. 2, c. 3, nn. 13 and 16, the vow is reasonably understood of avoiding venial sins insofar as it can be done, or of diligence to be applied in fleeing every sin. This care and diligence will of itself be very useful for every man. Wherefore we do not well understand why such vows are judged by Suarez, l. c. nn. 3 and 4, to be per se, or at least for many, little useful, to be disapproved, and simply to be dispensed. Nor can we assent to those who contend that a vow of avoiding deliberate sins can validly be made only by those who are of sufficiently proved virtue. Moreover, they admit the validity of a vow by which a positive good is promised to God, with which the obligation of avoiding all venial sins is connected, as is the vow of always doing the more perfect things, which is permitted to approved persons; nor is the validity of a vow of chastity, even imprudently emitted by the too

fragile, doubted. Therefore rather than the vow itself, the negative form can displease, which can generate confusion and disturb the soul.

In practice also it will be expedient to conceive or circumscribe the vow in such a way that, with scruples avoided, it may increase the pursuits of virtue. Finally, because of the authority of others, we shall be able to treat as null a vow of avoiding all venial sins, or a vow emitted by a person not approved of avoiding all deliberate sins; indeed perhaps a vow of avoiding all grave sins, if it has been pronounced by a person too fragile.

7. And better. Every good indeed of itself pleases God. But since certain goods can obstruct better goods, it will always be acceptable to God that someone do what is better. Wherefore, by force of a vow, you will never be obliged to a less good, so that a vow concerning a lesser good, as such, would not be valid. In general, therefore, a vow of marriage will not be valid, since it remains intact for one to desire and choose honorable celibacy, which in itself is a better state. Therefore a good is understood which is better than the voluntary omission of it.

[1] At least if knowledge of the greater quantity would have prevented the vow. And this is the difference between sin and a vow. He who had known better would not have made the sin; nevertheless, now he has sinned. But if he had known the thing better, he would not have vowed; then, with the exception of vows by which a state is entered, he did not vow. And because the vow of chastity of religious would not be prevented by more perfect knowledge, the vow subsists from that very fact, even apart from that knowledge.

[1] But these things are not accustomed to be done in promises which affect the whole life. Wherefore he who vows chastity to the Blessed Virgin Mary is judged to vow it to God, moved by piety toward the Blessed Virgin Mary.

An implicit promise sometimes suffices: thus, in the Latin Church, the voluntary reception of Sacred Order, according to the common opinion, brings in a vow of chastity (nor is that step which those to be ordained to the subdiaconate who are not yet bound by the vow of chastity are ordered to make an essential rite). He who has not wished to vow, or has plainly been ignorant of that connection of the vow, as is more like the truth, will not be bound by the vow, but from the precept of the Church he will have to observe chastity from the motive of religion. Express mention of the vow is not had in cc. 132 and 211.

He who habitually has known the obligation of a vow, and deliberately promises something to God, makes a true vow, although he seems to himself not to have adverted to the obligation. St. Alphonsus, l. 4, n. 201.

Yet he does not vow who has the intention indeed of promising, but not of obliging himself; but he does vow to whom only the mind of fulfilling the obligation is lacking.

II. Division of a vow. 1. A vow is absolute or conditioned. A penal vow is so called by which some expiation of penance or of a good work is promised if some less right act has been done.

2. A personal, real, and mixed vow. Strictly speaking, a vow from its very essence is the personal act of the one vowing, like every promise; nor, because it terminates in a thing, does that promise, which is of a certain fidelity toward God, affect the patrimony any more than a promise of fidelity to a man does. Nevertheless it is called personal, objectively, if one's own action or omission is promised: fasting, a pilgrimage, abstinence from luxury, from a certain drink; real, by which some external thing is promised; finally it will be mixed which is formed

from each element: whether both can be separated, as if you promise a pilgrimage with a liberality; or whether they are joined by an individual bond, as if care of a sick person to be had by one's own hands is promised.

3. A public vow, which is accepted in the name of the Church by a legitimate ecclesiastical Superior: thus the vows of religious profession; and a private vow.
4. A solemn and simple vow. It is solemn "if it has been recognized as such by the Church" (c. 1308 §2). Another vow is simple. Concerning the essence of solemnity, cf. the work *Quaest. de religione*.
5. A reserved vow, whose dispensation the Holy See alone can concede, and a non-reserved vow.

Besides public vows, whose dispensation or commutation is arranged by the legal regime itself (cc. 214, 633-636, 640, 648, 669), the reserved private vows are: "the vow of perfect and perpetual chastity, and the vow of entering a religion of solemn vows, which have been emitted absolutely and after the completed eighteenth year of age" (c. 1309). Before the Code, absolute vows of the three pilgrimages also were reserved.

III. The utility of vowing. A vow supposes a will which can fall away from the good or change its purpose. Wherefore neither for Christ, whose will was always most firmly fixed in the good, nor for an Angel, who stands immovable by his decrees, was there ever a reason why they should vow. Nor does it belong to the blessed comprehensors in heaven to vow, since their will is altogether fixed in loving God.

To us vows of a twofold genus can prudently be advised: a) vows by which some peculiar necessity or weakness is met, such as certain medicinal vows; and vows, generally momentary, with which we are not rarely accustomed to surround petitions made to God; b) vows which are fruitful seeds of good works, such as vows of abnegation, of seeking the more perfect things, and especially vows by which the more perfect discipline of Christ is confirmed in the religious life.

Moreover, although a vow is praiseworthy and meritorious, discretion must nevertheless be observed in advising or multiplying vows. And generally it is better not to have vowed than to have been released from vows by dispensation: that is accustomed to diminish confidence in God. Wherefore, the more a vow is of an arduous and lasting thing, with the greater caution it must be advised or admitted. Cf. *Quaest. de virtute rel.,* 140.

But by the faithful execution of vows, we praise and imitate the immovable sanctity of God, while by an oath we honor and cultivate His infinite veracity. Cf. *Quaest. de virtute relig.,* n. 141.

Divine fidelity in promises. Since the divine will is altogether immutable, God is faithful eminently rather than formally. Therefore God promises us the things which He signifies that He wills to give us, nor can a distinct obligation of perseverance be conceived. And the divine benevolence and liberality, which is confirmed by no formal obligation just as by no translation of right from God to us, is perceived to be more gratuitous.

Article II: The Obligation and Execution of a Vow

Nature of the obligation. The obligation of a vow is not of the same ratio as the obligation of a promise which is made to men. We ought to be faithful to men lest they be deceived, while God, better than the man promising, knows what is going to be. But a man can offer to God the future action itself, or a series of goods and perseverance in the purpose of a good work. Moreover, reverence owed to God, and therefore the virtue of religion, requires that an oblation once made not be revoked. Cf. *Quaest. de relig.*, n. 124, 128.

Force of the obligation. Now the force of the obligation is that which the matter demonstrates, unless the one vowing has wished to assume a lesser obligation. For he who could promise nothing could also lessen the force of his obligation. Except vows which are required in the undertaking of a state. The intention also of the one vowing brings it about that small matters coalesce or not, according as the one vowing intends to vow to God a certain notable whole by parts, or to offer individual performances as such. Coalescence is easier in real vows than in personal vows.

For a vow, although it induces a graver obligation than that of fidelity, admits smallness of matter, because negligence in observing a vow of small matter is explained from a slight esteem of the thing, not of God.

Judgment concerning grave or light matter must be made prudently, by observing what the vow contributes to divine worship either directly or indirectly. Directly, when a grave act of religion is vowed; indirectly, when a thing grave in another order, by the vow itself, is referred to divine worship. Cf. Suarez, *Rel.* Tr. 6, L. 5, c. 4.

When a singular action has been promised to God, this rule can be admitted, that the matter is thought grave which, for the intended end, would of itself be urged under mortal guilt by divine or ecclesiastical law. Therefore grave matter is judged to be: hearing Mass, fasting, abstinence of one day, etc.

But when a series of actions is promised, coalescence is not to be urged as in the matter of justice; moreover, one action which, taken in itself, would be notable can be a slight part of the promised series; finally, the very object of such a vow must be defined accurately.

Thus a vow of doing the more perfect things concerns not so much the things in themselves as insofar as they are more perfect; but the excess of perfection of itself seems light matter. Thus he who substitutes another honorable action for the Mass which it would have been more perfect to hear, is not guilty of omitted Mass but of neglected more perfect action; and this is thought light. Wherefore scarcely in a singular act which is not mortal fault will there be grave guilt against such a vow. He also will have sinned gravely who often, as if habitually and with a clear mind, has done things which he has certainly known to be imperfect. Cf. *Quaest. de relig.*, n. 129.

Is there an acquired right from a vow?. A right is sometimes said to be acquired for another from a vow. Properly speaking, however, an obligation of religion cannot, as such, transfer rights: only an obligation of justice can do that. Therefore, if after a vow a right has been acquired for someone, the cause of the right will be either an accompanying promise from justice made to a physical or moral person, or the execution itself which placed the thing in another's patrimony. Cf. *Quaest. de relig.*, n. 130.

The extension of the obligation is to be taken from the words of the one vowing and from their reasonable or common acceptance, always inclining to the more benign parts. Wherefore he who vows the rosary satisfies, saving a different expressed intention, by reciting the third part; he who vows Mass or fasting for a month does not have to fast or hear two Masses on Sunday; he who vows the fast of a vigil will have to neither fast on Sunday nor now anticipate the vigil on Saturday, since from c. 1252 §4, vigils are now not anticipated.

He who has made a conditioned or penal vow will be able, according to his varied intention, to impede the condition, to do the action to which the penalty is annexed, or will be prohibited from doing so.

He who has not appointed a day for fulfilling the vow must execute the vow as soon as he conveniently can. Yet a lesser cause is required for deferring than for omitting. But an illicit delay of execution will be judged grave if the one vowing exposes himself to danger of forgetfulness or of inability, or if the matter is notably diminished, for example in the vow of entering religion which a person already super-adult has made.

He who doubts whether he made a vow is presumed free; he who doubts whether he was fully in possession of himself in a vow certainly emitted is presumed to have been conscious, unless a positive reason renders probable the defect of deliberation: in which case, a probable opinion permits that the vow be neglected; although then it is better to ask a dispensation.

II. Execution of the vow. A personal vow can be fulfilled only by the one vowing; a real vow also through another, although he who does not have his own ought not therefore to beg another's. If another has spontaneously done it for you, your ratification will suffice. The intention of fulfilling the vow is not necessary.

The burden of a real vow which the one vowing has imposed upon an heir by a valid testament must be fulfilled by the heir from justice toward the testator. Likewise the heir must satisfy from justice a real vow by which a third party has acquired a right. With this omitted, canonical law obliges the heir from religion to fulfill real vows: "The obligation of a real vow passes to heirs, likewise the obligation of a mixed vow, for the part by which it is real" (c. 1310 §2).

By what title is the heir obliged? From the Code the obligation is said to pass. But it cannot pass except as the obligation which held the one vowing: this, however, was an obligation of religion. Yet most induce an obligation of justice. By what right, this plainly escapes us. Will you say with Suarez (*Relig.*, Tr. 6, Lib. 4, c. 11, n. 7) that goods are received by the heir "liable to the payment of his debts"? But it must be denied that here there is a debt properly so called, which belongs to justice. For a promise from fidelity does not bind goods; and the obligation of a vow is from fidelity toward God (2, 2, q. 88 art. 3): it works no tradition of right. By what miracle, then, would an obligation from religion be converted, in the heir, into an obligation of justice? Why should goods be burdened in the case of an heir rather than in the case of him who made the vow? Therefore this must briefly be said: without positive law, an obligation of promise from fidelity, whether to God or to a man, even if it is personal, would not pass to heirs; now, because of positive law, the obligation of a real vow indeed passes to heirs; but, since the Code determines nothing else, it passes such as it was, i.e., as an obligation of religion. Cf. *Quaest. de virtute religionis*, n. 138.

He who has vowed the deed of another must merely strive in an honorable manner that the other voluntarily do the thing promised.

A vow of a community or for a community. Concerning this matter, in which no little labor is expended [1], we think it must be said briefly as follows. Governors who represent a community, just as they can perform other things, can thus vow for the community. After the vow has been made, the obligation of religion passes to the successors of those who vowed, because through them acts the moral person, which remains the same. And if the promised act is one which does not demand the intervention of subjects, the execution itself will be liable to no difficulty. But if the subjects themselves must act, since they themselves promised nothing, they will have to be obliged by law or precept. If, however, the vow is not an action of those who represent the community, but is proposed to the very community of persons that they vow, certainly only those will be held by the vow who truly emitted the vow; nor, without a positive law, will successors be held.

[1] Cf. *Op. theol.*, Ballerini-Palmieri, II, n. 634.

Specification. The violation of a simple vow differs specifically from sacrilege, concerning which below. It is graver than sacrilege, insofar as it is more directly against God; it is also graver than perjury strictly such.

Obligation of a purpose. A good purpose itself induces a certain light obligation proportioned to human constancy. For it is not reasonable that someone recede without reason from a prudently made choice. Cf. Lugo, *De iust*. d. 23, n. 1, against Suarez, Tr. 6, L. 1, c. 2, and *Quaestiones de religione*, n. 141.

Article III: Cessation of a Vow

I. Cessation from within. The obligation of a vow is taken away from within, not only by execution, but also by the extinction of the condition on which it depended, and by a mutation of the matter which becomes impeding of a good, or impossible, absolutely or morally. Cf. c. 1311.

An equivalent but not specific fulfillment of a condition does not suffice for the obligation, unless the intention of the one vowing carried something else. When the determinate thing which was promised perishes, another thing is not to be supplied [1]. But when the thing has been sold, generally the price is owed, because the one vowing is judged to have promised the thing with all its utility. Yet if a peculiar use, now impossible, was intended, for example of a mitre to be used by a bishop in a certain first solemnity, the obligation is taken away by sale of the mitre. But by voluntary sale against the vow he will sin. He who vowed something to be done at a certain time, when that time has passed, owes nothing, unless the time was added for urging the obligation; for example in a fast of thanksgiving.

A vow of a thing partially impossible obliges to the possible part, if the thing can and usually does conveniently be divided; otherwise it does not oblige. And the one vowing owes nothing who intended the whole by indivisibility, for example a church with a tower. Nor, if the principal part has become impossible, will the accessory parts remain: he who had determined to make an impeded pilgrimage in a hair-shirt does not have to wear the hair-shirt.

The vow also ceases when the final cause ceases, as was said concerning an oath.

[1] What if the promise was disjunctive: I shall give this or that, and either has perished? Although a disjunctive obligation does not of itself cease when one of the two remains possible, nevertheless it will often happen in vows that the loss of one of the two things renders the execution of the vow much more onerous, so that the obligation is thought to be taken away. Indeed many with St. Alphonsus himself, III, 224, admit that the vow always ceases if you have not yet chosen one of the two parts. Cf. Ballerini-Palmieri, II, 620 and 651.

II. Cessation from without. From without, or by the intervention of ecclesiastical authority, a vow ceases by irritation, dispensation, and commutation.

1. Irritation of a vow is an act by which, with legitimate use of a power or right over the will of the one vowing, the vow is made void. In irritation, that general principle is applied: that one who is subject to the power of another cannot oblige himself validly by a vow, except insofar as this is not prejudicial to the right of the one to whom he is subject. Therefore the right of irritation belongs: to the father, with respect to children who are minors and not emancipated; to the tutor and mother, with respect to minors who are not emancipated; and probably also to paternal grandparents with respect to grandchildren who, lacking parents, remain under their power [1]. It belongs also to Superiors of religious, as to vows made after religious profession, excepting vows which are part of the religious profession and found the very faculty of irritating, and the vow of passing to a stricter religion: because that matter is withdrawn from the universal subjection of religious.

This faculty is not had with respect to novices. For c. 561, by which a novice is said to be subject to the power of the Master and Superiors, does not suffice for attributing that firm dominion which is required for irritation; and power under a higher law was denied. Cf. Suarez, *De relig*. Tr. 6, L. 6, c. 7, n. 11 and c. 11, n. 8; St. Alphonsus, l. 3, 233. The reason is that the power of irritating belongs to the Superior from the vow of obedience, which the novice lacks (Suarez, l. c.); nor can the private vow of a novice have the force of a religious vow and create a true Superior with dominative power [2].

Does it belong to the husband with respect to the wife? The matter was controverted, nor did the Code settle the controversy. It depended on the way in which c. *Noluit*, C. XXXIII, q. 5, was to be interpreted. - This power affects all and only vows which were made during the time of subjection. But the fact that the one irritating consented to the vow does not stand in the way. If there is a right over the matter of the vow, the one irritating can suspend the obligation of the vow as long as the fulfillment of the vow brings prejudice to him (c. 1312). For the one vowing could not detract from the rights of another or strip himself of his own obligations. Wherefore this irritation can be used by a Superior and by the Master of novices with respect to novices.

[1] Why authors also mention the paternal grandfather we do not know. Cf. Arregui, n. 213; Genicot-Salsmans, I, 235.

[2] The case would be different of a religious passing over, who, from c. 635 §1, is bound to obey the Superiors and even the Master of novices also by reason of the vow of obedience. For although he can return to his former religion, this is in no way by a precarious title, such as that of other novices, but by the firm bond of obedience by which he is bound as a religious.

2. Dispensation of a vow. flows from the power which ecclesiastical authority has of relaxing, in the name of God, the debt on which is founded the application of the divine law which urges the fulfillment of a vow. This power is contained in the words: "Whatever you shall loose upon earth shall be loosed also in heaven" (Matt. 16, 19).

The faculty of dispensing non-reserved vows, provided that a right acquired by others is not injured, is conceded by canon 1313: 1) to local Ordinaries as to all their subjects, even pilgrims; 2) to the Superior (therefore also the local Superior) of an exempt clerical religion, as to professed religious, novices, or others equated in this matter by c. 514; 3) to others to whom the power of dispensing has been delegated by the Apostolic See.

Since dispensation is made in the name of God, it is always an act of an inferior, and therefore requires a just cause, such as, in this matter, besides the common good of the Church, of the state, of the family, the greater progress of the one vowing himself; danger of transgression, great difficulty of execution, great scruples in execution; the imperfection of the act which was effected inconsiderately.

Lest excessive scruples arise, authors judge valid the dispensation which is conceded in good faith with error concerning the sufficiency of the cause. The difficulty and inconveniences of retraction seem to complete the cause. Something else would have to be said if no cause had truly existed.

An acquired right, which an inferior to the Pope cannot take away, is had in vows in which a certain ratio of onerous contract intervenes, as in vows which are made in religion; it is had also in vows accepted by a third party and made principally for his utility. For if the honor of God was the principal cause of the obligation, the other did not acquire a right except dependently on God to whom the promise is to be kept. (Cf. St. Alphonsus, L. 3, 255; Lehmkuhl, I, 622.)

As c. 1309 itself insinuates, reservation is to be understood strictly. And therefore, in order that vows of chastity and of entering religion be reserved, they must be perfect by reason of the end, insofar as they are made from love of the work itself or virtue, and by reason of the object, insofar as the matter is had perfectly. The end is imperfect in vows made under a condition concerning the future (and this even after the condition has been fulfilled); in penal vows; in vows made from fear, even light fear.

Matter is lacking in vows under a light obligation, under a disjunctive obligation, unless each vow was reserved; in a vow of not marrying, of preserving virginity, if these are conceived as distinct from the vow of chastity, in a vow of temporary chastity.

By the new disposition of law, no vow is reserved of him who has not yet completed the eighteenth year of age.

Among those who are accustomed to be delegated by the Holy See are numbered confessors of mendicant Orders or of those similarly privileged, according to the concession and moderation of their Superiors; and the power can be exercised outside the Sacrament (St. Alphonsus, *De privil.*, n. 109).

3. Commutation. is not, as dispensation is, an absolute condonation of a vow, but is the substitution of another honorable work in place of that which had been promised by vow.

"A work promised by a non-reserved vow can be commuted by the one vowing himself into a better or equal good; but into a lesser good by him to whom there is the power of dispensing according to the norm of c. 1313." These last words are added in order that they indicate the necessity of a just cause when a lesser work is substituted, and the caution to be observed of not injuring an acquired right. Commutation into a better work demands no cause. A light cause suffices that commutation be made into an equal work. Indeed, when this is done by authority of a Superior, a greater inclination to that work, a lesser danger of transgressing, suffice. And in doubt concerning equality, notable

trouble in fulfilling the work suffices. That one may act more prudently, it is to be advised that commutation by one's own authority be done with the counsel of a confessor. "A better or equal good is that which, the circumstances having been considered, especially the condition of the one vowing, appears more or equally to conduce to the glory of God" (Arregui, n. 217). Therefore the absolute excellence of the work is not a sufficient criterion.

A faculty given of dispensing-commuting extends the faculty of commuting to some dispensation; a faculty of commuting-dispensing restricts the faculty of dispensing, since some work must be substituted.

Reserved vows, however, are excepted from the faculty of commuting just as from the faculty of dispensing.

For him whose vow has been commuted, it remains intact to return to the former work, since the commutation was made in his favor. But he does not have to return to it if the work commuted by authority has become impossible or useless.

When the cause does not seem sufficient for dispensing, the promised work can be partly dispensed, partly commuted.

N. B. If the obligation of the heir to the very real vow has passed and is of religion alone, whoever can dispense or commute the vow will be able to relax it; but if, from the testament of the one vowing, an obligation of justice has arisen, he alone will be able to take away the obligation who can condone pious legacies.

From c. 1315, by every religious profession vows emitted before are suspended as long as the one vowing remains in religion. Before the Code, all prior vows were taken away by solemn religious profession. Concerning simple profession nothing had been established in law. Therefore the present law is of greater extension but of milder efficacy.

But, just as before the Code, now also the religious will be able to commute all prior non-reserved vows into the profession, at least perpetual, or to obtain that they be authoritatively commuted into it.

Counsels concerning dispensation and commutation. 1. In the internal forum, it generally is better to mix dispensation with a certain commutation. 2. In prescribing commutations, care must be taken, without anxiety, that we preserve the intention of the one vowing and the spiritual utility of the prior work promised. Wherefore: 3. Although a work which the one vowing was already accustomed to do can juridically be imposed, this is regularly not to be done, because the intention of the one vowing was that he add something to his accustomed works. Except perhaps a vow, such as not marrying, by which mere permanence in a state already admitted is promised. Wherefore, binding to monthly confession already customarily being made will well supply such a vow. - 5. Commutation can be made into a work of a similar ratio, or into a work of a better ratio, according to the hierarchy of virtues, of which charity is queen. Thus more frequent Communion of itself surpasses simple abstinence. - 6. If the work has the ratio of remedy, a medicinal work is to be prescribed. Let fasting be converted, for example, into abstinence; - abstinence from meats into abstinence from wine, cider, use of tobacco, sweetmeats, with some prayer; - exterior penance, assumed for chastity, into suppression of dangerous reading (for example, of a love story), or of some

worldly festivity. - 7. The difficulty to be avoided must also be attended to. If a distant pilgrimage has been promised, business or expenses can at times stand in the way of execution. If business, it will best be commuted into a nearer pilgrimage, with the monies that will be spared being given to the poor or to a pious work. If costs stand in the way, let a nearer pilgrimage be substituted, with a lesser alms or visitation of the poor added. - 8. Where a work has been promised merely as one of devotion, then these are almost commuted among themselves: a rosary, confession, communion, Mass, abstinence, fasting.

Summary

I. A vow,. 1. is "a deliberate and free promise, made to God, concerning a possible and better good" (c. 1307). A promise supposes the will of obligation; deliberation is necessary at least that which is required for sinning mortally, besides a capacity of estimation proportioned to the gravity of the thing. In order that it be wholly free, it must be immune from unjust fear and from error. And a vow vitiated by grave and unjust fear is null by the law itself, at least from c. 1307 §2. Probably null also is a vow which has been emitted from light but unjust fear alone. Error concerning the substance of the thing promised, concerning a condition so supposed that otherwise the vow would never have been emitted, concerning the final cause: makes the vow null. Indeed, in a merely individual vow, any error giving cause takes away the obligation; but a public vow is weakened only by substantial error. - A vow is made properly to God, but can be made in honor of the saints, when it has a cause in the honor rendered or desired for the saints. Besides, promises, approaching the obligation of a vow, can be made to the Blessed Virgin and to saints. - A vow can be made concerning only a good and one at least physically possible. And the good must be better, insofar as it is to be preferred to the voluntary omission of it, nor can the vow impede the faculty of doing what is better.

2. A vow is distinguished as absolute and conditioned, to which the penal is ascribed; real, personal, mixed; public and private; solemn and simple; private reserved and non-reserved. The relaxation of a public vow is defined by the legal regime. Reserved to the Holy See are private vows of perfect and perpetual chastity and of entering a religion of solemn vows, which were emitted absolutely and after the completed eighteenth year of age.

3. The reason for vowing proceeds from our inconstancy or mutability. Certain medicinal vows are to be advised, which, generally momentary, fortify petitions made to God; and vows which are fruitful seeds of good works.

By the faithful execution of vows, we praise and imitate the immovable sanctity of God.

II. 1. The nature of the obligation is of religion, by which we are forbidden to revoke an oblation made to God; its extension is gathered from the reasonable understanding of the formula applied, always inclining to more benign things; its force is demonstrated by the matter, unless someone, in private vows, has wished to lessen the obligation. According to the intention of the one vowing, matters coalesce or not. In a promised singular action, grave matter is thought to be that which, for the intended end, would be urged under grave obligation by divine or human law. But when a series of performances or actions is promised, coalescence is not to be urged as in the matter of justice; and several things must be distinguished according to that supreme rule of considering the gravity of the object from its intrinsic end, and of the parts from their relation to that end as to a whole. - He who

doubts whether he has made a vow is presumed free; but he who, in a vow certainly emitted, doubts whether he was in possession of himself, is presumed to have been conscious. Yet if a positive reason makes probable a defect of deliberation, by a probable opinion he is excused from executing the vow.

2. Execution: a) When. A vow without a day must be fulfilled as soon as it conveniently can, yet in such a way that illicit delay does not become grave except because of danger of forgetfulness, inability, or notable diminution of the matter.

b) Through whom. A vow, as such, is always a strictly personal act. A personal vow can be fulfilled only by the one vowing; a real vow can also be fulfilled through another. A real vow, from c. 1310 §2, passes to heirs, who nevertheless, without a testament of the author or a right acquired by another, seem to be held by religion alone, not otherwise than the one vowing himself; cf. *Quaest. de religione*, n. 138. A vow of a community strictly and immediately obliges the Superior or those who vowed.

3. The violation of a vow differs specifically from sacrilege, and is graver than sacrilege or perjury, insofar as it more directly touches God. - Inconstancy itself in good purposes is not immune from light fault.

III. Cessation. A vow ceases from within by execution, by the removal of the condition or final cause, by a mutation of the matter which becomes impeding of a good or impossible. - From without it ceases: a) by irritation, or the use of a contrary right, which, with respect to a non-emancipated minor, the father, tutor, or mother has; the religious Superior has with respect to subjects for vows made after profession, and probably the husband with respect to the wife. These have a right over the person; wherefore they can validly irritate all vows, even internal and for future time, which were made during the time of subjection: this irritation is called direct. If the right falls upon the matter alone, the one irritating can merely suspend the obligation of the vow as long as the fulfillment of the vow would harm his right; - b) by dispensation, or full condonation, which, divinely conceded by the words "whatever you shall loose," always demands a just cause, whether of the public or private order, yet is judged valid if it was conceded in good faith with error concerning the sufficiency of the cause. However, an acquired right of a third party, only the Pope can take away, on account of a public cause. Non-reserved vows, by canon 1313 itself, can be dispensed by local Ordinaries, by the Superior of an exempt clerical religion, by others (for example confessors of mendicant Orders) to whom the Apostolic See has delegated the power. This also is not rarely extended to reserved vows; - c) by commutation, or substitution of another honorable work in place of that which had been promised by vow. A non-reserved vow can be commuted into a better or also equal work by the one vowing himself; into a lesser good, by him to whom the faculty of dispensing belongs. For him to whom the vow has been commuted, it remains intact to return to the former work. - Moreover, by religious profession all vows previously emitted are suspended, as long as the one vowing remains in religion (c. 1315); he can also commute the same into religious profession, at least perpetual. It is generally better to mix dispensation with a certain commutation.

Title III: On the Vices Opposed to the Virtue of Religion

Utility. In setting forth the negative offices of the virtue of religion, by which we are ordered to ward off all vices contrary to religion, questions occur which we can deservedly call at once very useful, delicate, and modern. How useful it is to separate superstition properly so called from vain but human arts will be confirmed by the missionary who knows by experience itself how great a ruin of souls an imprudent reprobation of usages can bring among less cultivated peoples. No one will deny that the question of spiritism is modern and very grave. In the chapter on blasphemies, it will be helpful to separate true blasphemous formulas from vulgar sayings; at the same time, however, the question concerning the subjective guilt of those who use those formulas will have to be examined a little more accurately than is sometimes done. Nor can the mind of the theologian be so occupied by trivial blasphemers that he can scarcely attend to worse blasphemers, who by their writings affect God and divine things with insults. Then the intimate ratio of sacrilege will have to be penetrated, by which those things which are sacred by divine right and those which are sacred by human right may be well distinguished. Finally, in the chapter on simony, the legitimate use of stipends and taxes must be clearly demonstrated, and all confusion must be removed, which, because of the obscurity itself which it begets, is accustomed to pave the way for illicit modes of gain.

Ratio of order. Although the things which we offer to God necessarily remain always below the dignity and merit of Infinite Goodness, and under this respect our religion cannot become excessive, nevertheless our mode of worshiping God can be vicious, or even the term which we pursue with religious affection. In this respect man is said to sin by excess against religion; and that vice is called by the common name superstition. This, therefore, must be divided into superstition by which the true God is badly worshiped, and superstition by which a creature is unduly honored or obtains services; whence two articles compose this chapter on superstition. In the latter article there will be discussion of modern spiritism.

By defect, however, one sins against religion by irreligiosity, which contrarily denies the worship owed to God, to His Name, and to a sacred thing. Its fuller ratio, by which every office of religion is deserted, is not customarily treated here, because if it remains from contempt, it is to be reduced to the genus of blasphemy and is easily joined with apostasy, concerning which above; but if it has been mere negligence, it demands no other explanation besides those things which have been said concerning sloth. Less complete irreligiosity derogates either from the reverence owed to God, by tempting God, by blasphemy, and by perjury; or from the reverence which is owed to sacred persons or things, by sacrilege and simony. We shall treat each successively, passing over the question of perjury, which was treated in the chapter on oath.

Chapter I: On Superstition and Its Various Species

General notion. Superstition is false religion, i.e., a vicious worship of the true God, or worship rendered to a false Deity or to a creature to whom it could not be exhibited. Hence it is of a twofold genus. Superstition of the former genus sins in the mode, the other in the term to be honored.

Article I: On Vicious Worship of the True God

Division. This vicious worship is such either because it is of false signification, or because it is exhibited in that mode which violates the custom and prescriptions of the Church: this worship is called superfluous.

I. He commits the superstition of false signification:.

1. Who wishes to honor God through the ceremonies of the old law, for example circumcision: for these signify Christ as about to come.

But circumcision performed for health or cleanliness is not forbidden; or, what missionaries must well attend to, as a gentile custom, or as a profane sign of adhesion to some nation or class. Where such a custom exists, it will be better, if it can be done, to advise that it be done soon after birth rather than that puberty be awaited.

2. A layman who acts as a public minister of the Church; a private person who, by his own authority, proposes certain things to be done, as if they were ordered by the Church to the worship of God.
3. He who proposes false relics, exhibits an image as falsely portentous; he who simulates that he has been enriched with revelations.
4. He who, in order to move the people, lies that some miracle has been done, or feigns that a history is found in Sacred Scripture.

These things of themselves are mortal, because they are injurious to the First Truth, and found religion upon lies. Yet ignorance or simplicity and the lightness of the matter itself can excuse from grave sin, as if, in confirming a true doctrine, some circumstance not explored is exhibited as certain.

Counsels of prudence. Besides the honor to be reserved to Truth, modern studies of the sciences demand that we positively foster no worship of an image or of relics whose authenticity is not morally established.

Yet the prudence by which we ought to avoid the scandal of the little ones at the same time demands that we not rashly attack things which by the very long duration of use have acquired a title of veneration, although perhaps one distinct from that which is vulgarly assigned to those things. For pious places and things can become sacred from pious devotion to the saints.

Wherefore cc. 1283-1285 provide for the authenticity of relics; but at the same time c. 1286 decrees these things: "Let local Ordinaries not permit, especially in sacred sermons, books, newspapers, or

periodicals destined for fostering piety, questions concerning the authenticity of sacred relics to be agitated from mere conjectures, from merely probable arguments or prejudiced opinions, especially in words savoring of ridicule or contempt" [1].

[1] In these matters it is especially useful to distinguish a twofold "critical" ratio: one irritating, which scandalously disturbs simple persons; the other learned and prudent, which gradually unteaches errors: this serves truth, solid piety, and removes obstacles or prejudices to the conversion of the learned.

II. He commits the superstition of superfluous worship. who mixes with true worship some vain, foolish, unsuitable circumstance: for example, if he adds certain things to or subtracts certain things from the ceremonies of Mass; if he places force in a definite number of candles, in the name by which the priest is called; if he trusts in the very number, as such, of prayers; if with certain and firm hope he recites prayers to which special favors or immunities are promised, etc.; if he studiously chooses principal feasts for fasting, and this not so that there may be greater mortification or sins may be expiated, but by placing hope in the day itself. Although the devotion itself of fasting on more solemn days has a savor of singularity which of itself seems little to be commended.

Therefore c. 1261 wisely orders these things: §1 "Let local Ordinaries watch that the prescriptions of the sacred canons concerning divine worship be diligently observed, and especially that no superstitious practice be introduced into divine worship, whether public or private, or into the daily life of the faithful, or that anything alien from the faith or discordant from ecclesiastical tradition or presenting the appearance of base gain be admitted." Moreover, exempt religious also must observe the laws which the local Ordinary has made in this matter for his territory, and their churches or public oratories can be visited for this end (c. 1261 §2).

Those superstitions, since they betray more a weak judgment than a bad will, and since the matter, unless it has been evil, does not gravely dishonor God, will generally be venial in themselves. Yet conscious authors of such superstitions cannot be excused from grave sin. It is also plain that he sins gravely objectively who, in order to honor a Saint, violates prescribed abstinence; and that he will be blasphemous who employs a dishonorable action for divine worship, or makes a vow to complete a crime (something else must be said if, in order to avoid a hangman, he promises by vow something honorable).

The rude are to be well instructed concerning the right use of sacred things: a) that they not add superfluous things to means in themselves good and approved; b) that they apply things used in the Church, for example wax, blessed water, etc., together with humble deprecation and confidence in the goodness of God, but not so that they expect from these things, as if by the work worked, an infallible effect. Cf. Voit, II, 425. Superstitious security prepares difficulties against true faith.

Article II: On Superstitious Worship of a Creature

Observation concerning order. The ancients were accustomed, and after them not a few modern writers of moral theology still are accustomed, to set forth the argument of superstitious worship of a creature in such a way that first they speak successively of idolatry, or explicitly of worship of a creature, then of divination by which knowledge is sought, then of vain observances by which other good or evil effects are superstitiously sought or avoided. (Cf. St. Thomas, 2, 2, q. 94-96.) This order, drawn partly from the matter, generates a confusion between those things which are grave by their whole genus and those which are practically excused from grave sin, which seems rather to be

avoided [1]. Wherefore it seems better to attend to formal differences, and thence to distinguish undue and open worship of a creature, or idolatry; implicit worship, which is contained in magic; and vain observances which can be purified from that worship.

[1] Hence, if we are not mistaken, moderns have been moved to excuse implicit invocation of the devil from grave sin. Yet it does not escape us by what ratio a true invocation of the devil changes its theological species because it is implicit rather than explicit. (Thus, for example, Aertnijs, I, 419.)

§ 1. On Idolatry

What idolatry is. The word idol, *eidolon*, which in modern use properly signifies an image, statue, or symbol of a false god, has also been said of the false gods themselves. (Cf. Prat, cited by Michel in *Dict. Theol.* Vacant, under the word *idolatrie*.) False gods, I say, i.e., one who is not in any way, or at least is not God.

Idolatry, therefore, strictly is latria or the worship reserved to the true God alone, which is rendered to a false god or to his image, statue, or symbol. And a twofold ancient idolatry can in reality be distinguished: one which directly affected with the worship of latria persons who were said to be gods at least by some participation of divinity; the other which immediately terminated in an image, statue, or symbol. Men cultivated in liberal studies honored idols of this sort because of a relation at least representative of persons, while the pagan crowd, perhaps also deceived by certain wondrous phenomena, confused the image, statue, or symbol with the divinity itself. (Cf. Michel, *Dict.* Vacant, VII, col. 606.) In Sacred Scripture, both of the Old and of the New Testament (St. Paul), idols are sometimes asserted to be nothing, sometimes demons: they are nothing, because they are not gods; they are demons, both because polytheism must be referred to the devil as author (cf. Prat, l. c.), and because by the power of the devil the marvels were done by which idolaters were deceived (cf. 2, 2, q. 95 art. 7).

The very principle of evil has been affected with honors, that it might at least be placated by worship.

Nor is modern idolatry among barbarians to be understood otherwise: in idols (*fetiches*) some power is judged to be present.

In a more general ratio, however, idolatry signifies every vicious worship of a creature. For the worship due to God, our Lord and Benefactor, demands that we expect all things either immediately from Him, or mediately according to the order pre-established by Him and the powers conferred by Him.

Therefore he who strives to obtain something through a power which God did not will to exist or which He did not at all ordain for our uses, incurs the vice of idolatry: he renders to a creature an honor which cannot be referred to God.

Of how many kinds it is. Moreover idolatry is distinguished as material, which is simulated without internal affection, for example from fear; and formal, which proceeds from the intention of worship. The latter is called perfect, when someone adores the sun, an idol, which from infidelity he estimates to be God; imperfect, when someone, either from hatred of God or from desire of obtaining something from the devil or from another creature, without subordination under the divine will, exhibits to it an undue honor as to God. Therefore idolatry is often joined with infidelity or heresy; formal idolatry is objectively a most grave sin; and perfect idolatry is objectively graver than

imperfect. Subjectively, however, because of the more conscious malice of the will, imperfect idolatry can immediately or in itself, though not in its cause, be graver than perfect. Material idolatry is also a grave sin, because it is at least a pernicious lie against religion; and often it is also opposed to external confession of the faith.

Sought effects. Sometimes, through express worship, general protection is sought for obtaining goods, or immunity from evil, as among certain peoples of the Indies; sometimes invocation merely tends to this, that knowledge may be obtained concerning hidden things, especially concerning future contingents. Other effects also can be sought: sciences without labor, health without exterior remedy. The use of malefices is worthy of particular mention; discussion concerning these will return at n. 246.

Invocation of the devil. 1. Express invocation of the devil is had when it is formally asked that the devil, or a false god, teach certain things, either by himself in apparition, that is, by illusions; or through pythons, that is, living men obsessed or possessed; or through the dead who appear, necromancy; or through dreams, oneiromancy; or through figures and signs, geomancy, haruspices.

To express invocation belongs a more general pact with the devil, by which someone in a more universal ratio gives himself over to the devil. This is the sin of idolatry, and besides of sacrilege and hatred of self. A more general pact, I say; for a particular pact is contained in every express invocation of the devil.

Morality. Every express invocation of the devil is to be charged as a grave sin. This sin does not vary in species against religion on account of the variety of effects which are sought; but according to the quality of those effects, one can also sin against charity or justice.

2. Tacit invocation. Since no invisible creature can furnish knowledge while dependence upon God is neglected, except the devil, an invocation of a creature made absolutely necessarily terminates in the devil. But he who asks certain things from the devil enters into illicit commerce with the sworn enemy of God; he distrusts divine Providence, professes a subjection to the devil unworthy and injurious both to God and to Christ, and exposes himself to the danger of harmful deception: this we cannot admit without derogating from charity toward ourselves. If besides this the knowledge proper to God is attributed to the devil, a new ratio of blasphemy is added. Cf. 2, 2, q. 94 art. 3 ad 2.

What is to be judged concerning the worship which not a few barbarians exhibit to deceased ancestors: whether, from omitted honors, they fear evils for themselves, or, because of rendered honors, they expect beneficial action from them? One must proceed cautiously in this matter, lest we sin by excess or by defect.

The persuasion concerning the permanent existence of souls which have put off the body is founded on truth and can be salutary.

To affect the dead with honors, on account of the dignity with which they were increased on earth, or their proximity to us, or on account of the beneficent action which they exercised while living, pertains to praiseworthy piety and gratitude which, in every age, the most cultivated and Christian peoples foster and demonstrate.

But to expect evils from them through fear, or goods from them in the present, is false, unless it is founded on their good merits and conjunction with God; it is objectively superstitious if that power, in its origin or exercise, is conceived as released from divine Providence.

Practically, therefore, this worship which barbarians render to their ancestors without any suspicion of malice, indeed with consciousness of duty, rather than being at once and absolutely blamed, must be purged of errors.

§ 2. On Magic

Notion and morality of magic. 1. According to modern psychological analyses [1], worshipers of gods are distinguished from magicians by this mark: the former by suppliant prayer, but the latter, whether in certain circumstances or perpetually, contend and boast that they use a mysterious power conferred on them, truly or fictitiously. That power is exercised through means which are without any proportion to the effect sought, or are generally not judged to be naturally at hand for man. Wherefore we call it mysterious. Magic, therefore, designates power of this sort or the use of it, while formerly magic was a general name of superstitious art, or designated that art which is directed to wondrous effects, changes of bodies.

Therefore no magic is exercised by him who, deceived by error in the natural sciences, employs vain means, ridiculous medicines in which he thinks a natural power is present, as barbarians hope for the restoration of a member from certain ligatures or things carried.

2. If a magician thinks that power has been made his through an express pact with the devil, he sins by a manifest and grave sin of superstition, both in the prior pact itself and in the conscious use of a power whose origin is diabolical: the magician agrees to be an instrument of the devil.

But he who seems to himself conscious of a power which he at the same time judges to be preternatural and not proceeding from God, whether he has judged rightly or erroneously, is subjectively guilty, in operating, of tacit invocation of the devil, which cannot be excused from grave sin.

[1] Cf. D'Alès, *Dict. d'Apologétique*, under the word [OCR uncertain: ...].

§ 3. On Vain Observances

1. By the name vain observance we understand usages, both negative and positive, of themselves inept for the intended end.
2. **Morality.** Those vain usages can be employed as sacred rites by which gods are worshiped or magical power is obtained or exercised: then a grave sin of idolatry or of express or tacit invocation of the devil is necessarily committed [1]. It can also happen that they are employed outside every sacred rite, without firm faith, but on account of a certain light fear lest it be so, or lest what is predicted happen. Concerning that use theologians are accustomed to answer more benignly, so that, scandal being set aside, they hold it for merely venial, unless someone wished to direct as it were his whole life by dreams and signs of this sort. But in order that they may answer thus, it is necessary that they deny that in those circumstances there is a tacit

pact with the devil or implicit invocation of him, since every pact with the devil, or every invocation of him, cannot but be objectively a grave sin.

But what, in reality, does the psychological analysis of those who thus abstain from a gathering where they would be thirteen in number, or from a journey to be undertaken on Friday, or who do certain indifferent things, as when they pour out prayers in a certain number, neither more nor less, or complete the recitation in such a position or gesture, demonstrate to us? That they avoid those things or do these with this mind: because, if perhaps what was feared should happen, they would not wish the misfortune or adverse things to be imputed to some negligence of their own; because, before the possible event, they desire to free themselves from some anxiety; because, after the wondrous inventions of this century, for example telepathy, they suspect perhaps some hidden natural power. Thus, if future contingents are known only to God, do not the mysterious preparations of facts seem to be demonstrated by many prior apprehensions (*presentimenti*)? And, however the matter may be, since by no precept are they compelled to sit at table with thirteen in number, or to make a journey on the sixth feria, or to abstain from such a gesture, they think they derive a certain greater security from observance, which moreover they will easily admit to be little reasonable. Therefore they are far distant from those who, conscious of the natural disproportion, will absolutely to produce some effect through observances of this sort: these indeed are guilty of a tacit pact with the devil, but not those others, for they manifest a fearful rather than strictly superstitious mind. Yet in their action is discerned a certain defect of trust in divine Providence, which venially derogates from divine worship. And greater is the disorder of him who positively employs certain things than of him who omits certain things from that fear. Indeed, constant use of those means, or of vain observance, would betray grave distrust, on account of which he is deservedly charged with grave sin. Hence he will not be gravely guilty who deliberately avoids those things which an augur gathered from the lines of his hand would be harmful to him.

Those are to be more gravely censured who positively, as happened in the recent war, carry certain ridiculous amulets. Although even these, if they yield to a certain timidity, are not to be said guilty mortally.

[1] Prat, art. cit., notes that idolatry is joined with a special ritual art.

A protestation by which someone excludes commerce with the devil is indeed ineffective if someone employs means which he certainly knows cannot be obtained without diabolical power in concrete circumstances, or if someone, suspecting such a power, nevertheless pursues the effect with absolute will. For he wills the effect, even if it is diabolical. But he who, in doubt concerning the nature of the cause, by a prevailing will rejects every diabolical participation, and does not cooperate, by formal or materially unexcused cooperation, with those who expressly or tacitly recur to the devil, cannot be guilty of tacit invocation of the devil.

Yet when there is grave suspicion of diabolical intervention, a grave cause, such as teachers of theology or of the sciences can have, is required that someone, even with a protestation premised, which must be made, licitly exercise such things. For if even ritual exorcisms do not have infallible efficacy for expelling the devil, much less will private prayer certainly prohibit the devil from intervention. Therefore in that exercise there is contained a certain active permission of diabolical intervention, which, from the motive of religion and for avoiding the danger of harm from probable

commerce with a wicked and most cunning enemy, is forbidden to us without cause. Cf. d'Annibale, II, 54 fine.

A just and proportionate cause is also required for cooperation, even if it is merely material, with those who at least subjectively are guilty of superstition.

Corollaries. 1. It is not licit to exercise the art of pythons, even if no dishonorable means are employed and conjectures concerning future things are made without firm faith, for example from the lines of the right hand, unless the whole intention of joking is manifested externally. For not a few suffer scandal of superstition from this; not a few are harmfully deceived in their affairs, or, struck by fears, truly give cause why they undergo the feared evils.

But he who, without firm faith and scandal, from a certain curiosity or for raising laughter, goes to consult persons of this sort, does not sin, unless perhaps venially. Cf. Sanchez, *Dec.* L. 2, c. 38, n. 20; c. 10, n. 13; Ballerini-Palmieri, *Op. Theol.*, II, 347.

2. The Sacred Scriptures themselves warn us that men are rightly taught certain things through dreams. But prudent discernment of spirits must be made here. Therefore, in order that you ascribe a preternatural and good origin to a dream, it is necessary that the thing in itself not be unworthy of God; that it impel to a good work; that it bring final peace at least to the soul and raise it to heavenly things. - But in order that someone fully trust a dream, he ought to be almost certain of its divine origin. For, according to the testimony of St. Alphonsus, l. 3, n. 9, God, while He sends such things, at the same time furnishes this certitude. - And with this case excluded, he who follows certain indifferent indications of a dream not sought without full faith, for example so that he buys those "numbers" of the lottery which he dreamed, or avoids a journey which was shown to him as dangerous, is not to be charged with certain sin, especially since there are sometimes at least confused mysterious previsions of future or distant things.

3. For a just cause, when other means of evacuating doubt are lacking, it is right, with humble prayer premised, to employ consultory lots, provided that the judgment is expected from God alone. As if someone placed at a crossroads does not know which way must be taken, and it somewhat matters that a good one be entered.

4. Certain usages of devotion, for example going around an altar or shrine three times, sowing or planting on the feast of such a Saint, are not superstitious, but are means of imploring the help of the Blessed Virgin Mary or of a Saint, unless those circumstances are thought to be infallible, or plainly necessary, or efficacious of themselves. Nor are novendial devotions to be disapproved, insofar as they are founded on some revelation, or honor some mystery, for example the months in which Christ was in the womb, or imitate the example of the apostles in preparation for Pentecost, or fulfill the condition of an indulgence; yet it would be superstitious to believe that those prayers are not profitable in a greater or lesser number.

5. As Cajetan already warned, in 2, 2, q. 96 art. 2, formal superstition is absent where, from ignorance, a natural or divine power is thought to be in certain remedies or usages. Thus the S. C. de P. F. itself pronounced exempt from superstition the Chinese custom of exploding a cannon during an eclipse, lest the dragon devour the moon. Wherefore missionaries, when

they detect certain inept remedies employed by barbarians, for example certain objects hung around the neck, must not immediately think that they are superstitious, but must explore the genus of power which is thought to be in them.

Indeed, from the opinion of Cajetan, in art. 4, they generally either do not sin or sin only venially who with a simple heart observe certain rites not received by the Church, by which, especially if they have been taught by ancestors, they hope that some effects will follow by divine power: as those who against a definite disease carry the first coin offered to Christ on Good Friday. These things therefore should rather be held as foolish things not to be propagated, than scruples concerning grave guilt are to be thrown in.

6. It is plain of itself that no illicit divination is exercised by those who probably conjecture from the face, the disposition of members, the lines and parts of the hand, marks of writing, the temperament of the body, indeed even the propensities and affections of the soul.

Nor can the use of a divining rod be charged with superstition, which, by a certain inclination or agitation of itself, is judged to reveal where metals are to be dug or where a source of water lies hidden. For the effect is expected from a merely attractive natural power, whether it is truly present or falsely thought to be present.

In doubt concerning the quality of a power, an effect, provided that, because of analogy with effects certainly natural, it permits the natural causality to be probable, should rather be ascribed to natural powers. And the things which today have been discovered or even observed, for example concerning natural telepathy, are such as confirm the presumption of a natural power. Yet in a general ratio, a prudent conclusion by which all things would be declared natural cannot rest upon an unknown natural power. Cf. also what was said at n. 243.

On malefices. A malefice is a power of harming others acquired from a pact and cooperation of the devil. One is called amatory, or a philtre, whose use is for exciting carnal love or hatred, the devil moving man's phantasy, yet in such a way that liberty is not taken away: for the devil can do nothing upon the will. Another is a poisoning, by which harm is brought upon the person of another or upon his goods.

Although, not even today, the use of malefices seems to be altogether absent, and, in certain occult assemblies, horrible arts seem sometimes to be exercised; yet because these things are hidden from most, and because popular credulity is too inclined to suspicions of malefice, pastors and confessors ought rather to restrain those who by a rash accusation of malefice bring grave injury upon the innocent. Nor should they themselves be prompt to recognize supernatural effects. How often a preternatural explanation was demanded solely by an enlarged narration of the facts, so that serious inquiry detected either some fraud or nothing very wondrous! At the same time, let them prudently dissuade the rude from recurring to vain and superstitious arts in diseases, especially of animals, but let them require counsels from those skilled in medicine.

§ 4. On Modern Spiritism

I. Notions. By the name spiritism strictly comes the formal evocation of spirits of the dead, who: a) perform various wonders: noises, rotations of tables, blows, the sound of musical instruments which

are moved by no hand, writings which you would call automatic, material apparitions, sometimes preserved by a photographic image [1], "levitations" by which persons or things are lifted into the air at a certain distance from the pavement; b) and especially satisfy the curiosity of those questioning, by giving various pieces of knowledge concerning the dead, concerning the other life, concerning hidden things, concerning remedies to be applied, concerning future contingents.

In a broader use now, spiritism means the same phenomena, for example answers through blows of tables, obtained without formal or express evocation of spirits.

Often, however, a medium is employed, or, according to the strict notion, a suitable person, who carries mandates between the living and the dead and brings them back. Hence, if we speak properly, no one is or is judged to be a "medium" except one who is the instrumental cause of another agent. But effects whose principal cause is, or is thought to be, another agent endowed with intellect and will are called psychical, or metapsychical, on account of their origin or because they are or are judged to have proceeded from another soul; while those effects are called physical which the medium works as principal cause (cf. Heredia, *Spiritism and Common Sense*, p. 54).

Some "medium" persons are public, or of public use, who, presenting themselves on every occasion, have acting as a medium almost as their art; others are only of private use.

II. Historical. Already from remote antiquity, men were accustomed through a pythoness, or a person who was judged to have a python, to question the dead concerning various hidden things. Sacred Scripture offers us an example in I Samuel, or Kings, c. 28, vv. 6-19; in this place Saul, after having consulted the Lord in vain, goes to a pythoness, who, at the king's request, raised up Samuel that he might instruct Saul concerning the future event. But a threefold explanation of that fact is proposed. Most of the holy Fathers, St. Augustine remaining doubtful, think that the devil appeared in the figure of Samuel; afterward, from the time of the Protestant pseudo-reformation, Catholic writers judged that Samuel, in reality, with the Lord permitting, appeared; nor were those lacking who ascribed the whole matter to the fraudulent arts of the pythoness.

A certain Swedenborg (1688-1772) is reported to have been the forerunner of modern spiritism, who in the year 1715 declared at London that he had had a vision, after which he was able to enter into habitual commerce with spirits, the fruit of which was a Protestant sect. But he is rather to be called a visionary, whose methods are too distant from modern evocations. Wherefore they rather refer the origin of present spiritism to the mysterious noises which, in a country house of the place Hydesville in North America, heard in the year 1847-1848 by the daughter Fox, impelled her to ask whether perhaps the noises were to be attributed to the spirit of some deceased stranger. After an affirmative answer had been received, she herself and her sister began to try communications with spirits, on account of which the two daughters soon obtained universal celebrity. In the year 1888, however, one of the sisters confessed that all things had been fictitious, and that the credulity of the mother had given occasion to the fraud (cf. Heredia, op. c., pp. 11-14).

Thence the use of communicating, truly or apparently, with so-called spirits began to be spread, so that in the United States of America and in the Canadian region there are many thousands of thousands of associates (Roure, *Le merveilleux spirite*, c. 12). For already in the year 1900 the association of the United States and Canadian region (*National Spiritualistic Association of America*) had

declared that there were there 10,000 mediums, 350 preachers devoted to propagation, and 82 temples.

For spiritism has grown into a religious sect, which, resting upon a scientific demonstration, as they assert, takes its beginning from communication between the living and the dead, and receives from them its dogmas: infinite divine intelligence; permanent personal identity after death; denial of eternal punishments; and so forth.

III. Harms. Besides the heretical persuasions which occur there, assiduous presence in spiritistic meetings excites the phantasy, disturbs the mind, makes men prone to cultivate superstitions. And serious evocation of spirits makes the one evoking guilty of formal superstition. Therefore spiritism is connected with the worst moral consequences, so that at least for this reason, even if the devil has not seized the hand of the one writing answers, spiritism, like every heresy, can deservedly be called a diabolical work [1].

IV. Objective interpretation of things. First, those who examine the alleged things with a mind empty of prejudices come more and more to this conclusion: that most wonders are to be attributed to the accustomed frauds and conjurers' collusions. On this matter agree the Rev. Fathers Roure in France (*Le merveilleux spirite. Le spiritisme d'aujourd'hui et d'hier*); Thurston, in England (*Month*, 1917, p. 226 ff., "Spirit phenomena"); Zacchi, O. Pr., *Lo spiritismo e la sopravvivenza dell'anima*, in Italy; and, in the United States of America, Heredia, S.J., who detected the very tricks which "mediums" use, so that he was able to imitate the greatest wonders; and in the book *Spiritism and Common Sense*, reveals several arts, also demonstrates how men skilled in the sciences are less suitable for discerning those frauds, and recounts several confessions of "mediums" who, after they had obtained the greatest fame for themselves, confess that they were deceivers [1]. Wherefore someone could write: the more you explore the facts, the less wonderful they appear.

As to those things, few in number, which have truly happened without conjurers' arts, writers go off into four opinions. Some, among Catholics, impute almost all things to diabolical intervention, abusing this principle: that all things are to be judged diabolical from presumption if certain things are demonstrated to be diabolical. To this saying P. Zacchi, op. c. XII, opposes this: "Because some rare spiritistic phenomenon shows itself refractory to every naturalistic explanation, it is not permitted to affirm, as is done by many, that all the phenomena of spiritism, without distinction, are due to extra-natural causes." - Others, "spiritists," proceeding from this beginning, that besides the material body and the soul there is some more subtle body, the sidereal body, by which the soul communicates with exterior things, attribute those same things to the souls of the dead, which, through the sidereal, astral body possessed by a "medium," whose force is increased by the spectators, perform those exterior actions. Others think all things to be natural; but they are explained by cryptomnesia, unconscious memory, telepathy, and a certain bodily power not yet well known, which has been ascribed by some to a certain animal magnetism.

Others premise these things: a) We are not rightly permitted, because we lack a modern explanation, to flee to a preternatural origin. How many things remain mysterious in certain facts certainly natural; how many things which formerly would have been held for truly preternatural phenomena today admit scientific formulas! b) Against a preternatural explanation there stand: the perpetual repetition of the same phenomenon in the same circumstances; the necessity of certain circumstances; the limited ratio by which, for example, a person or thing cannot be raised beyond a

certain height: for it is clear that a spirit is not subject to physical laws. c) Communication with the soul of the dead, which cannot happen without the permission of God, is indeed rarely permitted; but it cannot in any way be held for normal and ordinary, so that certain commands or ceremonies of ours could determine or induce that communication [1]. Nor do good angels thus become our servants. But with good angels and separated souls excluded, nothing remains except the diabolical preternatural.

With these things posited, this opinion attributes many things to the accustomed frauds and conjurers' collusions; it thinks that many other things have their explanation in the special or morbid state of persons. Certain few things it vehemently suspects betray satanic intervention, while desiring nevertheless a better demonstration of the facts.

Thus the Second Council of Baltimore (T. I, c. 7, n. 36) pronounced: "Indeed it seems well explored that many things which are said to be exhibited in circles of Spiritism as wondrous phenomena, either are altogether fabricated and produced by fraudulent collusion of the operators among themselves, or are chiefly to be ascribed to the imagination of the persons who are called mediums and to the credulity of the spectators, or finally are to be attributed to a certain manual dexterity, such as is used among conjurers. Yet it scarcely seems to be doubted that certain things at least from these are to be traced back to satanic intervention, since they can scarcely be sufficiently explained in another way."

This is also our conclusion. We think these things are usefully to be added. From the Roman Ritual, t. X, c. 1: "Signs of the possessing devil are: to speak in an unknown tongue with many words, or to understand one speaking; to reveal distant and hidden things; to show powers above the nature of age or condition; and other things of that kind which, when very many concur, are greater indications." Those signs remain formally true; but when in reality they are present, that must be judged otherwise than formerly, because of facts recently observed. Since from this it seems reasonable to admit that there are those who sometimes unfold in the body a certain mysterious power; that communications are had through mutual phantastic representations, without oral or written speech; that in some persons there is a certain stupendous power of foreseeing facts [1], we shall say much more cautiously that communication of an unknown tongue, or one naturally inaccessible, is truly had. - Besides, the Apostle himself already (1 Tim. 4, 7), speaking of errors sufficiently similar to those of the spiritists, warned us to avoid foolish and old-womanish fables, but to exercise ourselves in true piety. And the honor of true religion seems to demand that by the very severity with which we test the facts and then judge them, we show that we have no need at all of miserable spiritistic phenomena for strengthening our faith, but that altogether different rational foundations underlie it; and that we remove the danger of lamentable deceptions, the recent memory of which ought to teach us prudence. Facility of credulity cannot at all be confused with promptitude of Faith.

[1] Cf. Thurston, S.J., *The Problem of Materialization*, *Month*, 1922, p. 331; 1923, p. 67 ff.; 227 ff.; 334.

[1] Concerning the harms which are to be feared from spiritistic usages, cf. P. Charles, S.J., [OCR uncertain: A ... de spiritisme], *Nouv. Rev. Theol.*, 1921, p. 113 ff.

[1] Very recently the celebrated Guzik dared to commit himself to be examined by some learned men of the Paris Faculty of Sciences and of the Institute called "College de France," i.e., D. D. P. Langevin, Etienne Rabaud, Laugier, A. Marcellin, I. Meyerson. The experiments, begun November 6, 1923, had their end in the middle of the month of December, so

that they were prolonged for six weeks. Thus in the official report inserted in *L'Opinion* and *La Croix*, December 21, 1923, they conclude: "The undersigned declare that their conviction is complete and without reserve: the phenomena which were presented to them bring into play no mysterious mechanism. - The medium produces them: by using his elbow for certain contacts applied to the region of the shoulder; - by freeing one of his legs from control: he then realizes movements, contacts, projections of objects by means of this freed member." Cf. also *Documentation catholique*, 1924, p. 495 ff.

[1] We judge that this also holds concerning the souls of limbo. Thurston, S.J., proposes a wonderful hypothesis on this matter, *Communication with the Dead* (*Month*, 1917, p. 139 ff.).

[1] There are in Westphalia persons commonly called *Kiekers*, who seem endowed with a certain gift of foreseeing things. Cf. Zur Bonsen, *Das zweite Gesicht* ([OCR uncertain: the opening words of the subtitle] Wirklichkeit und Wesen[†], - [OCR uncertain: Neue Gorres] Freiburg im Breisgau, 1923).

Concerning the morality of use or participation, with religion alone considered,. these things seem to have to be said: 1. It is certainly wrong to cooperate actively in meetings of spiritists, where they contend or desire to become more certain, from evoked souls of the dead, concerning religion itself and the facts of the invisible world. For whether the prodigies are true or fabricated, mere and often foul superstition is exercised in these. Cf. letter of the Holy Office, July 30, 1856. - 2. It would also be superstitious to use those mysterious means for knowing things which certainly transcend human science. - 3. He who, with a mind alien from superstition, so that he repudiates diabolical intervention, is present at experiments either of doubtful nature in themselves or which he himself has persuaded himself are of the natural order, cannot indeed be accused of superstition, but will generally foster evil or dangerous curiosity. - 4. Wherefore on April 24, 1917, in plenary assembly, the Holy Office decreed these things (*A. A. S.*, t. 9, 1917, p. 268): The doubt having been proposed: "Whether it is licit, through a Medium, as they call it, or without a Medium, with hypnotism employed or not, to be present at any spiritistic locutions or manifestations, even those presenting an appearance of honesty or piety, whether by questioning souls or spirits or by hearing answers, or merely by looking on, even with tacit or express protestation that one wills to have no part with malignant spirits. - Negative in all things." - The reason is that even mere witnesses favor an illicit thing, and expose themselves to the useless danger of demoniacal intervention and of their own harm. - 5. This, therefore, is the general rule. But a skilled and sufficiently experienced man who wishes to intervene to detect and denounce fraud, to lessen the fortune of superstitions of this sort and to remove the deception of many, is not merely looking on. Wherefore, provided that he sufficiently removes the scandal of another, we do not think this positively forbidden, especially if the Ordinary judges such a plan opportune. - 6. And because probable arguments and recent discoveries lead to that opinion, that there are certain bodily powers still unknown to us, skilled men are not to be prohibited from carrying out a scientific investigation of them without the scandal of another and physical detriments of body or mind. But here there can be no question of any evocation of spirits. - 7. It would be manifestly impious to adhere to the pseudo-religious sects into which, as we said above, spiritists come together.

Canonical sanctions. Besides the general prohibition of consulting those who were said to possess a python, or diviners (Deut. 18, 11; Levit. 19, 31), the evocation of the dead for learning truth is specially prohibited in Deut. 18, 11 and Levit. 20, 6, 27. - Several canons of the more ancient Councils prohibited consultations of diviners, augurs, and lot. You may see them collected in the Decree of Gratian, Cause III, q. 5, c. 9; C. XXVI, q. 5, cc. 1, 2, 5-10; and in the Decretals, V, 21, c. 1-3. - Pontifical constitutions against sortileges can be read in Ferraris, v. *Sortilegium* (VII, p. 470). - To

these, as to spiritism, were added the decrees of the Holy Office, April 21, 1841; July 8, 1847; May 21, 1856; July 30, 1856; April 2, 1894; April 24, 1917 (here above), which certainly must be circumscribed to meetings where they truly attempt to enter into conversations with the dead or to obtain their manifestation. - The Sacred Penitentiary touched the matter in its responses July 1, 1841 and February 1, 1882 (*A. S. S.*, I, 177). From c. 2325, he who has exercised superstition must be punished by the Ordinary.

On animal magnetism and hypnotic suggestion. At the end of the eighteenth century there was much discussion of a certain mysterious power proper to living bodies, which, because of the magnetic-electric power then discovered, obtained the name animal magnetism. Today various names are used: Od; radiant nervous power; fluidic vital power; psychic power; ideoplastic, teleplastic power (cf. Zacchi, op. c., p. 191); physico-psychical powers: which words explain nothing. It can be admitted that certain mediums are endowed with a power of this sort. They exercise it especially in a special excitation which they call "trance." - They can also undergo hypnotic suggestions; but these are now accustomed to be separated much more from the phenomena of spiritism, so that they rather find a place below, where the care of one's own life and health is treated.

Summary

Superstition is false religion, i.e., a vicious worship of the true God or prohibited worship of a creature, and is said to be opposed to religion by excess.

I. Vicious worship of the true God can be of false signification, as when someone wishes to honor God through the abrogated ceremonies of the Old Law, or through usurped ministry, or through false relics or miracles: this, mortal of itself, can be excused from grave sin by ignorance, simplicity, or lightness of matter; - it is superfluous worship, which sins in mode and circumstance: as if you add certain ceremonies, or trust in the very number of prayers as such: these are thought rather venial. The rude are to be taught concerning the right use of sacred things.

II. Concerning superstitious worship of a creature. In order we shall treat of idolatry, of magic, of vain observance, and of modern spiritism.

1. On idolatry. Idols signify both false gods and, more properly, their images, statues, symbols. Wherefore idolatry strictly is the worship of latria attributed to a false god or to some image or symbol of him.

Material idolatry simulates worship; formal idolatry truly renders it. Perfect idolatry adores a creature which from infidelity it estimates to be God; imperfect idolatry, from desire or hatred of God, exhibits honor to a creature as to God. Perfect idolatry must be judged objectively, though not always subjectively, at least immediately, graver than imperfect. Material idolatry itself is a grave sin. And vulgar paganism confused the image or symbol with the god itself. In Sacred Scripture, idols are sometimes called nothing, sometimes demons. There was also worship of the principle of evil. Similar things occur today among barbarians.

In a more general acceptance, idolatry designates every vicious worship of a creature. This is already had if you wish to obtain certain things through a creature otherwise than God has ordained. For religion wills that we expect all goods immediately or mediately according to the order pre-established by God.

Through express worship, either knowledge or other effects can be sought, besides general protection. Since, excepting the devil, no other creature invisible to us wills to act while released from dependence on God, an absolute invocation of a creature necessarily terminates in the devil. But express invocation of the devil, by which formal commerce of servitude is entered into with the sworn enemy of God, is to be charged as a grave sin. To express invocation of the devil is referred the more general pact with the devil.

2. On magic. What formal idolaters contended to obtain by suppliant prayer, magicians contended to obtain by use of mysterious power. He who consciously exercises a power which he at the same time estimates to be preternatural and not proceeding from God, in operating, is subjectively guilty of tacit invocation of the devil, which cannot be excused from grave sin.
3. On vain observance, or positive use or omission which is inept for the end for which they are employed. Those vain usages, if they are employed as rites of worshiping a creature or obtaining magical power, contain a grave sin of idolatry or invocation of the devil. Employed without firm faith outside an intention of this sort, they are rather venial defects of trust in divine Providence, unless by constant use the distrust becomes grave.

A protestation by which someone excludes commerce with the devil can be overcome by the fact, when someone employs means which he knows are ineffective without diabolical intervention, or when he absolutely wills things which he suspects to be demoniacal. Nor does protestation prevent that, when there is serious doubt, that intervention is permitted. Wherefore a proportionate excusing cause must be present, just as for materially cooperating with those who are subjectively guilty of superstition.

It is not licit to exercise the art of pythons seriously. In admitting dreams, prudent discernment of spirits must be employed.

Certain usages of devotion, innocent in themselves, are mixed with some venial superstition if material circumstances of place, number, or person are held as necessary or infallible. But conjecture concerning propensities from physical signs, or employment of a falsely estimated natural remedy, is empty of superstition. Credulity concerning malefices is rather to be restrained, although malefices can still exist.

4. On modern spiritism. Spiritism is properly the formal evocation of spirits who do various things and especially teach various secrets, whether a person peculiarly suitable, a "medium," is employed, or direct questioning is made, for example, through blows of a table. Phenomena are distinguished as physical and psychical, from the principal cause operating: psychical phenomena are judged to have proceeded from another soul. There is also a religion of spiritism, which is judged to receive from the dead dogmas stained with errors against the faith. Moreover, frequent use of spiritism begets harmful effects upon the phantasy and the mind, so that it can truly be called a diabolical work. In public meetings of spiritism, at least most of the portents by which bystanders are moved are fictitious. Things which truly happen some attribute to the devil, others to separated souls, others to natural powers. With commerce with separated souls excluded, which God regularly does not permit, most things seem to be ascribed to natural powers, whether already known or probably knowable and to be

known. Few psychical things remain, and indeed rather knowledge plainly inaccessible than various wonders, for example "levitations," which bring in a founded suspicion of the devil, insofar as they are established. Cf. *Rituale*, T. 10, c. 1, n. 3.

It would be wrong to cooperate actively in meetings of spiritists, since in these many truly exercise superstition. And it would be superstitious to use mysterious means for knowing things which certainly transcend human science. He who, repudiating diabolical intervention, is present at experiments of doubtful nature, or which he himself is persuaded are of the natural order, generally fosters evil or dangerous curiosity. Yet skilled men are not prohibited from carrying out, without scandal and physical detriments of persons, a scientific investigation of facts, with every evocation of spirits excluded. Assistance at spiritistic locutions or manifestations was declared illicit by the Holy Office on April 24, 1917. Yet a sufficiently experienced man does not therefore seem impeded from wishing, without scandal and especially after consulting the Ordinary, to intervene to detect and denounce frauds.

Learned theologians are now accustomed to ascribe hypnotic suggestions, as such, to natural phenomena, so that these are rather to be treated below, where suicide, etc., is treated.

Chapter II: On Irreligiosity and Its Genera

Article I: On Tempting God

What it is to tempt God. 1. The reverence owed to God requires that we have recourse to the special help of God and to His attributes modestly, discreetly, and humbly. To will that He should exhibit Himself as if on a stage is gravely injurious to God. Whoever, therefore, without cause, asks for the intervention of God commits this malice. Therefore the proper ratio of tempting God is in the rash demand for divine intervention. To this malice there can be added a sin against faith and hope, if someone, as if doubting, formally wishes to explore the divine truth or attribute, and thus thinks of tempting God more strictly, or of proving Him by experience.

Various concepts. Theologians do not all conceive tempting God in the same way. For some it is rash exploration of the divine perfection; for others, however, rash exploration of the divine good pleasure. They distinguish express temptation, which intends exploration, and interpretative temptation, which lies hidden in the manner of acting. Each is formal when, whether doubting or not, someone with conscious rashness asks that God come to his aid or manifest Himself.

Who are guilty of tempting God. He tempts God who, without a special divine instinct, absolutely wills or promises a miracle; or who, without sufficient cause, wills a miracle conditionally, if it please God, as if someone offers a miracle to prove the truth of faith; if someone, in a slight matter, or when other means are at hand, asks for a miraculous sign. The former will of itself be a mortal sin; the latter in practice will generally be excused from grave sin by some simplicity and slight insistence.

Common use. In common speech he is said to tempt God who rashly exposes his health, who preaches or teaches without preparation, insofar as he seems to demand an undue divine help. But this is rather presumption, which is opposed to another precept, for example the fifth. For where expectation of divine help is lacking, temptation of God is necessarily absent. - The gravity of the guilt must be judged from the importance of the foreseen harm.

Article II: On Blasphemy

I. Notion and division. 1. **Notion.** Directly opposed to the will of worshiping God is a will insulting toward God, which blasphemy betrays. For blasphemy is an insult brought against God.

2. **Division.** a) Since God can read an insulting affection in the heart, a man can be blasphemous without any exterior sign; and he can manifest or exercise that mind exteriorly, either by signs of words, formal or equivalent, or by an insulting action. Hence blasphemy of heart, of mouth, and of deed.

Yet that division is not formal. When blasphemy is reserved, only that is understood which is done through speech, oral or written.

b) Direct blasphemy proceeds from a formal intention of dishonoring God; indirect blasphemy contains a virtual intention in the will of saying or doing things which are insulting toward God [1]. The former differs from the latter in degree, not in species.

c) Blasphemy can be either simply insulting, or heretical, which at the same time, at least exteriorly, denies a revealed truth; or imprecatory, by which evil is wished to God. And in its own genus it is completed by an affection of detestation or hatred, which at the same time is a most grave violation of charity.

d) God can be blasphemed in Himself, or in His saints and in sacred things. The former is graver, although, as blasphemy, it does not differ in species from the latter. But, according to the intention of the blasphemer, it can at the same time touch the Saints themselves or the Blessed Virgin in their own excellence, for example in the Immaculate Conception: then at the same time it will be against dulia or hyperdulia. St. Alphonsus judged that this regularly, in his time, did not happen. St. Alph., l. 3, n. 132.

e) Finally blasphemy is distinguished as vulgar, which is uttered in very customary formulas, often after the manner of an interjection, so that the blasphemer himself did not compose the words or arrange them into the form of a sentence; and deliberate, whose formula was invented or composed by the blasphemer himself.

[1] Under another respect, formal is called culpable; material, excusable.

II. Gravity. Of the sins which are opposed to religion, blasphemy is of its genus the most grave, so that true blasphemy does not admit slightness of matter.

An insulting word pronounced against the Saints in jest, not from contempt or hatred or indignation, is thought to be venial. But this is not done in jest except when the things treated are of lesser importance and give occasion to pleasantries, as if you call Saints Crispin and Crispinian cobblers.

The root of direct blasphemy, i.e., the impulsive cause which is accustomed to induce a man to formal blasphemy, is of itself the appetite of vengeance against God. Namely, bearing indignantly his lot, which he knows to be subject to God's judgment, an angry man seeks that vengeance of which alone he has the supply; and he attacks the honor of Him whom he cannot harm or touch. This root appears also in the selection by which, in various adversities, he blasphemes the saints who are invoked as protectors against definite calamities: as if, because cattle have been lost or are sick, you blaspheme St. Paschal, and because of pestilence, St. Roch.

The root of indirect blasphemy is too swift anger or impatience, together with a defect of reverence toward God or the Saints. The same defect of reverence also gives place to jocose blasphemies.

III. Examples. 1. As many as deny that God exists or are unwilling to worship Him are in reality, objectively, guilty of most grave blasphemy. Atheists hold the highest degree among infidels; then those who break off every positive relation between God and man, so that they put God as if outside intercourse. Those succeed who admit only natural religion; finally, those who wish to render to God only the diminished worship of Mohammedans, Jews, or heretics. This blasphemy becomes graver if there is added, through formal temptation of God, a certain provocation, as: "If He exists, or if He can, let Him punish the denier of the faith, of the Eucharist," etc.

2. Very grave, formal, and scandalous blasphemies are committed through impious books and newspapers.

3. He blasphemes not only who, raging against God, curses Him, or denies His wisdom and goodness in words, or has doubts; but also he who, without anger against God, seriously and knowingly utters things which, from their signification or from the manner of speaking and the circumstances, bring diminution upon the divine honor or rule. And other signs against God, such as spitting toward heaven, are blasphemous just as words are.

Criteria. In judging blasphemies, account must be taken of the signification of words according to the common understanding of men. Wherefore certain formulas which of themselves sound like heresy, because they are not apprehended as such, will be free from the stain of blasphemy. Thus, at least today, when angry men say: "May the blood of Christ destroy you," they do not seem to ascribe any power of destroying to the Blood of the Redeemer, but think merely of imprecating against a man. Wherefore we judge that those err who judge these sayings to be blasphemy: *milliard de dieux*, *tausend Sakrament*, as if someone thought of the true God as multiplied or of more than seven sacraments, when so easy an explanation lies beneath: "take the word once said as if pronounced a thousand times and more often." On the contrary, formulas which are not blasphemous of themselves will have this note from common interpretation. Thus for a long time, because of common estimation, those blasphemed who used the Flemish imprecation: "God damn me." - And the same must be said of an interjection ambiguous of itself: *Haere nam de Dieu*.

Yet this must be observed. When a formula, as in Flemish, conveys a complete sense, an error can be demonstrated and more easily corrected. But where there is only a certain interjection, no error can be demonstrated, but the sense of the word must as it were be changed. For words are arbitrary signs.

Wherefore, in the year 1903, the bishops of Belgium by common counsel denounced the error concerning the Flemish formula and soon changed the common persuasion. Concerning the French formula there was greater doubt. But since the words themselves did not seem everywhere to be taken with an insulting signification, the bishops and several authors began to inculcate another interpretation and to purge those words of the note of blasphemy. Wherefore, today, this advantage is had, that no formula is established as blasphemous either in Belgium or in France. Penitents indeed will have to be judged according to their past conscience; but they can be admonished that they should indeed omit those words as rather uncivil and sometimes scandalous, yet should not consider them as blasphemous unless from the adjuncts it is shown that they uttered these things in anger against God Himself.

Truly blasphemous, indeed objectively containing heresy or impiety, are several formulas used in certain parts of Italy, by which evil is wished to God, *mannaggia a Dio*, or to the Blessed Virgin, or by which the purity of the B. V. M. seems to be denied. Yet rather than deny purity, they seem to express indignation concerning the mode of acting of God or of the B. V. M. *Madonnaccia*, which word can be said innocently of an inelegant painting, becomes blasphemous when it is referred to the B. V. M. As to the words *mannaggia ai morti tua* (literally: may it be ill for your dead), these are not blasphemous, nor do they signify a serious curse of a dead man. Those who utter them commonly intend only "to reproach the living, to whom they direct that curse after the manner of an insult" (St. Alph., l. 3, n. 130, who does not estimate it as anything but a light sin).

St. Alphonsus admonishes that formulas, in doubt, are to be held as not blasphemous. Contrary to what certain severe men have taught, corrupted formulas are not to be held as blasphemous.

V. Subjective guilt. 1. In order that there be blasphemy, words must be used significatively, not merely historically or by way of jest. Hence he does not blaspheme who reports, in the blasphemous words themselves, a blasphemy heard or said by himself.

2. Those are to be judged guilty of formal blasphemy: a) who with clear mind or deliberately write impious things; - b) who, sufficiently in possession of themselves, from impatience at an evil which God or a saint could have averted, utter words which they know to be insulting toward God or the saints, or who wish evils to God or the saints; - c) who, to mock priests or pious persons, vomit out blasphemous words. Indeed, the heretical irony of this sort easily aggravates the blasphemy, since it adds contempt of faith or religion.
3. Those are excused from formal blasphemy who do not advert that what they say is blasphemous.

Those are judged immune from grave guilt who in great sadness utter sentences which, taken literally, would be blasphemous and heretical; for example: "God afflicts me too much; God has abandoned me; God is not just."

5. But what must be said of those who, from anger against creatures or from custom, without an intention insulting toward God, advertently pronounce formulas which are in themselves blasphemous, yet not according to a blasphemous signification, but merely by way of a certain interjection to which every definite signification is lacking?

Not a few condemn them for formal blasphemy, because blasphemy can be committed by an indirect intention of wounding the divine honor, and this intention is contained in the formal utterance of a blasphemous word. Yet, when the intention of signifying has been removed, words are mere sound. Therefore material blasphemy does not remain except apparently. Thus there is no formal speech, although perhaps it is thought to exist by hearers. And since God looks upon the heart, just as interior blasphemy can exist without exterior blasphemy, so exterior blasphemy can be corrected by the interior mind. Therefore formal blasphemy seems to be denied. Of course the scandal of blasphemy will easily be given among hearers; wherefore a grave obligation must be urged of avoiding those words, which always notably derogate from reverence, or of laying aside the custom of saying them, by a firm purpose repeatedly renewed and by flight from the proximate occasion. Yet, when vulgar blasphemies from mere custom are said mixed with other formulas which are not blasphemous, either without anger, or even from anger, but openly without any respect to God, are not those formulas sufficiently shown from the adjuncts to be uttered without a blasphemous intention, or to be empty of blasphemous signification? Wherefore more often than has customarily been said, men of this sort seem to be excused from grave sin. They themselves, spontaneously or when questioned, are accustomed at once to say that they were not thinking about God. And when they mixedly utter and accuse in the sacrament formulas truly and falsely blasphemous, they themselves seem to reveal a conscience immune from the guilt of blasphemy. Nor does the horror of the faithful, when they hear blasphemous words, suggest a different conclusion. For the faithful

experience a similar thing when vain usurpations of the name of God are accumulated in anger. Cf. Baller. ad Gury, I, 303, note 10.

6. Some excuse from the sin of blasphemy blasphemies uttered in drunkenness, because it belongs to the ratio of blasphemy that it be uttered knowingly. Thus Vasq. in 1.2, d. 127, n. 11; Gobat, *Quinarius*, tr. 5, c. 9, n. 19; and 19, n. 34-39; Salmanticenses, tr. 25, c. 2, n. 30-32. Others, for example Sanchez, *Decal.*, L. 1, c. 10, n. 44, judge that drunken men are guilty in a foreseen cause, since the words retain their objective signification, or because drunken men have true concepts, so that the whole essence of material blasphemy is had. We think a distinction must be made between blasphemies which drunken men utter as if mechanically and without advertence to the signification, and blasphemies which, seized by anger, they direct against God. In the former case, for the bystanders themselves, the objective signification seems to perish, so that they are not even in the cause of blasphemy; in the other case, if there has been at least confused foresight, we judge that they have committed an insult imputable in its cause. Cf. I, 483.

N. B. It would be unlawful to provoke drunken men to blasphemies. For if you have provoked directly, you blaspheme through them as through an instrument, which is grave. If indirectly, at least a venial irreverence against God will remain, whose name is usurped in a vain and sufficiently hateful manner. Cf. Lehmk. I, 226.

You ask what vain usurpation of the name of God is, and how it is to be estimated.

1. A usurpation is vain when it is done without utility and without reasonable cause, of which sort already is any expression or manifestation of pious affection.

Vain usurpation of the name of God is a venial sin which, according to the adjuncts and affection, must be placed among graver or lighter sins. The words "By God - Name of God," uttered in anger against men, sound almost like blasphemies; they bring some danger of blasphemy, so that they are grave venial sins. In anger against God, they would be truly blasphemous, interiorly however, not exteriorly. Without anger, from a certain small impatience ("Therefore, God, leave me in peace"), or as a sign of admiration, or by way of a frequent interjection, the words: "Mon Dieu, good God," and similar words savor of a certain light irreverence prohibited in Ecclus. 23:10. Although they are often excused by inadvertence. If there lies beneath a certain ratio of invocation, as sometimes, "Jesus, Mary!" every fault will be absent.

This case being excluded, because words draw their force from common usage, and the speaker by himself alone cannot change their signification, the guilt of vain usurpation is not removed by the fact that the name of God is uttered without sense by way of some interjection.

Nor does it befit a Christian to pronounce the name of the demon continually. In itself, however, the use of that name is not a sin.

Imprecations of grave evil uttered against men will be grave, if seriously willed, or if they are uttered by children against parents or by subjects against Superiors of similar authority. If not, they do not seem to contain grave guilt. Wherefore penitents will have to be questioned concerning their intention.

Action of the confessor. 1. He will unteach particular errors concerning formulas which are judged blasphemous while they contain only a vain usurpation of the Name of God.

2. Those who use blasphemous formulas and at the same time excuse themselves from grave sin, because they merely signified anger and a serious will, will better be turned away from these habits by other arguments than by injecting consciousness of mortal sin. Let the confessor also invoke the ratio of civility, and insist upon the opportuneness of greater patience and meekness.

3. Let him suggest suitable remedies against the custom. Such are a fervent renewal of a daily purpose, with the addition of some small penance, for example beating the breast, reciting the *Gloria Patri*, giving a modest alms; the substitution of another sonorous formula in place of the blasphemous one. Nor let him omit to admonish that this is the immediate fruit of such an effort: that it takes away fault from acts which through custom are done indeliberately.

4. Let him gravely rebuke parents or masters who blaspheme with greater scandal before children or workers. - Indeed, formulas which, because they are similar to blasphemies, give occasion among children to grave sins must also be avoided.

Article III: On Sacrilege

I. Notions. 1. Historically, sacrilege, already among the pagans, was first said of theft of a sacred thing, by which the sanctity which ought to have protected the thing kept by the temple, by the church, was violated. Hence sacrilege occurs by every and only action by which a sanctity publicly protected, as such, is violated.

2. Therefore broadly sacrilege is any sin against the virtue of religion; strictly it is the violation of a sacred thing, or such irreverence committed toward a sacred thing or person as specially conflicts with its sanctity.

3. Sacrilege supposes a sacred thing or person, i.e., one dedicated to divine worship. A deputation of this kind requires a public institution either of God or of the Church. For no thing can be called sacred unless all must hold and treat it as sacred. This demands the use of jurisdiction or public power. In the New Testament, God Himself or Christ made some things sacred, i.e., the Sacraments; but ecclesiastical power made others. The sanctity whose origin is divine is more intrinsic, so that the corresponding violations can be estimated more from the very nature of the thing. For sacrilege further supposes an action directly opposed to the quality which has been put into the thing in order to the worship of God, or which is done against that which, under the same relation, has been prescribed positively or negatively. Therefore many things, we do not say all, depend upon the positive determination of the Church. Thus, why it is sacrilege to strike a priest, but not to calumniate him, no ratio "a priori" can be given: it is so because it has thus been established by the Church, so that the person is reckoned sacred in himself, not in his reputation.

II. Division. By the ancient division received in the canons prior to the Code, sacrilege is distinguished as personal, by which a sacred person is violated; local, by which a sacred place; real, by which sacred things are violated.

But is this division formal and ultimate? St. Thomas, 2, 2, q. 99, art. 3, seems to estimate it as formal, because a diverse ratio of sanctity formally exists in persons, in places, and in things. Cajetan, on this place, declares this with sufficient hesitation in this way: the sanctity of a person alone is formal and absolute; the sanctity of a place proceeds from the fact that it is containing of persons, or because it is deputed to sacred actions to be performed there; the sanctity of things, however, is relative, insofar as either they make holy, for instance the sacraments, or they are ordered to holy persons. - But why the sanctity of a place should be shown to be formally diverse from the sanctity of things under such a respect does not really appear, and seems capable of being safely denied, so that the threefold genus is reduced to a twofold genus.

Moreover, a probable opinion holds this specification as ultimate, so that if, in the declaration of sin, the circumstance of sacrilege has been omitted, the defect can be supplied by saying: I committed personal or real sacrilege. - Certainly in examples of sacrilege, for example in unworthy communion and in the profanation of a sacred vessel, great diversities are found, so that you would say with enough difficulty that they are of one genus. Yet the diversity is rather in the action than in the formal violation of sanctity. But in a sacrilegious abuse of the Eucharist, violation of absolute sanctity seems to concur with relative sanctity. Wherefore because of the twofold ratio of sacrilege, this violation will have to be accused. In other actions, another species will often concur. Thus he who contemptuously tramples an image will also be guilty of blasphemy; he who has stolen a sacred thing will at the same time be unjust.

Suarez, *Rel.*, Tr. 3, L. 3, c. 1, n. 6-8, denies that any ratio of this partition can be given, and thinks formal distinctions are rather to be repeated from the mode in which a sacred thing is constituted and by which that sanctity is violated. Nevertheless, in c. 5 he adheres to the common opinion, especially because of ecclesiastical laws. Yet if a sacred place is violated as another sacred thing, as if you destroy a temple as you could break sacred vessels, then, according to Suarez, l. c. n. 7, it would be the same sacrilege.

Ballerini-Palmieri, II, n. 383, observe that sacrilegious deeds are accused in practice in such a way that anxiety about specification need not be had.

It will also help to have noted this, in order that we may acquire a more distinct notion of sacrileges: the sanctity of a person is more partial; the sanctity of a place is more extrinsic and of positive law (while now the whole consecrated temple is of the same sanctity, and a place is not reputed sacred because of the reserved Eucharist, could not the law have declared holy a space of a certain extension around the tabernacle?); the sanctity of a thing can be so total that every profane use is held as sacrilegious. Moreover, the very right of the Church in sacred places or things is wholly sacred, so that every violation of the Church's right is to be called sacrilegious.

III. Gravity. No one doubts that sacrilege is grave of its genus. Yet, because not God Himself in Himself but some creature is violated, slight matter is had: concerning this the faithful, especially boys and adolescents, are to be opportunely admonished, lest, struck by the terror of the name, they hold everything, for example a small theft of money offered in church, as grave and dare not accuse it.

IV. Cases of sacrilege. In a general ratio, a mode of treating a sacred person, place, or thing which flows from contempt of the sacred quality is sacrilegious. It remains now that we consider the actions which, done in themselves or even from a diverse intention, are to be condemned of sacrilege.

1. Personal sacrilege is committed: a) by a real injury inflicted upon a cleric or religious of either sex (c. 119); b) by the lustful pleasure of a cleric constituted in major order, or of a person who is bound by a public vow of chastity (cf. cc. 132, 1308, §1).

A real injury, since it embraces all exterior actions which by deeds, not words, are injurious to body, to liberty, or to dignity, contains blows, which are punished in c. 2343, and which by some, for example by Arregui, n. 194, are presented as a distinct ratio of sacrilege. Cf. Wernz, *Ius Decr.*, t. 2, nn. 163-165.

Because of lustful pleasure, both the sacred person and the accomplice contract the malice of sacrilege. And according to the common opinion, internal sins also are to be noted with sacrilege.

This sacrilege requires carnal delight of the sacred person. Wherefore a sacred person who, without his own lust, persuades a non-sacred person to a carnal sin is not sacrilegious. On the contrary, a non-sacred person who persuades a sacred person to lust is sacrilegious. If both persons are sacred, a twofold sacrilege will have to be declared. Cf. *De castitate*, n. 314.

Since sacrilege supposes a sacred person, and no one can make himself sacred by a private vow, violation of a private vow of chastity cannot be sacrilegious. Cf. Wernz, *Ius decr.* VI, n. 335. Yet the authority of St. Alph., L. 3, n. 47, brings it about that many still acknowledge probable sacrilege in every violation of a vow of chastity. Cf. Ferreres, I, 372; Arregui, n. 194. This opinion brings this advantage: that a layman, a religious, and a priest can accuse a carnal sin in the same way by adding: I have a vow of chastity.

What is certain is that the lust of a priest who is at the same time a religious makes one sacrilege, since formally the same sanctity has been induced under a twofold title.

c) Violation of the privilege of forum, insofar as that still has force, was also thought to be sacrilegious. The same is defended today, for example by Ferreres, I, 372; Arregui, n. 194; Gen., I, 289, although the note of sacrilege is not mentioned in can. 2341, by which the privilege of forum is sanctioned.

2. Local sacrilege supposes a sacred place. From c. 1154, those places are sacred which by consecration or blessing are deputed to divine worship or to the burial of the faithful; i.e., a church or oratory endowed with public blessing and a blessed cemetery.

a) It is committed principally by actions which the Church has prohibited as specially repugnant to the sanctity of the place. Such are actions by which a sacred place is violated, i.e., the crime of homicide, under which name here suicide also must be understood; injurious and grave shedding of blood; - impious and sordid uses; - burial of an infidel or of an excommunicated person after condemnatory or declaratory sentence (c. 1172).

Although just killing, for example the execution of a capital sentence, cannot constitute the crime of homicide, as we have noted in *Epitome*, II, 489, 2, b, nevertheless it will scarcely fail to be an impious use by which a sacred place is violated.

Furthermore, a sacred place is not violated except through an act that is certain, notorious, and placed in the sacred place itself; it does not suffice that it be done in the sacristy.

Less than personal or real sacrilege, local sacrilege seems to us to cohere with the very nature of things, so that it must be known from the definition of the Church. Wherefore, although several, for example Gury-Ball., I, 286; Lehmk., I, 526; Arregui, n. 191, speak more severely, we think no other actions are to be held as sacrileges on account of repugnance with the sanctity of the place, unless by canonical definition they violate the sacred place per se. Therefore we approve the formula of Wernz, t. 6, n. 335: "Local sacrilege is committed: 1. by crimes in the Church by which the sacred place is polluted." - And in reality, since sacrilege is defined as violation of a sacred thing, and the Code enumerates the actions by which a sacred place is violated, what else should we think of adding? Wherefore voluntary emission of human seed, unless from the adjuncts it ends in a sordid and impious use of the church, does not now seem to be held as local sacrilege.

b) From prior law they hold that local sacrilege is also committed by violation of the immunity or exemption of the church from civil authority and jurisdiction. For the sacred right of the Church is violated. As is plain, that rule does not fall upon acts which in the region where they are done are practically tolerated, for instance the exaction of taxes.

c) And likewise they speak of violation of the tempered right of asylum, which c. 1179, limited to a church or public oratory, thus defines: "The church enjoys the right of asylum, so that the guilty who have fled to it are not to be taken away from there, unless necessity urges, without the assent of the Ordinary or at least of the rector of the church." The right of asylum, as it previously was, is explained by Ballerini-Palmieri, II, n. 419-422.

Profane acts will be sacrilegious if they are impious or sordid uses.

Although the destruction of a church is of itself sacrilegious, nevertheless in war it is lawful to attack a church which is to enemies in place of a fortress. Cf. Ballerini-Palmieri, II, n. 423.

3. Real sacrilege is committed: a) by unworthy reception, handling, and administration of the sacraments. An impious abuse of the Eucharist is also opposed to the office of latria; and special penalties, chiefly excommunication most specially reserved to the Holy See, are decreed by c. 2320 against him who has thrown away the consecrated species or has taken them away or retained them for an evil end.

The turpitude of carnal sin brings it about that he who voluntarily pollutes himself shortly after communion, within half an hour, or when vested for celebrating sacred rite; or who sins carnally while he carries the Eucharist or celebrates Mass, is judged guilty of sacrilege according to the common estimation.

b) By profanation of sacred vessels and instruments, which are customarily at least blessed.

c) By violation or unworthy treatment of sacred images and relics; by abuse of Sacred Scripture, for example to establish heresies or filthy things.

d) By theft of a sacred thing or of a thing which had been handed over to the church to be kept. Wherefore they call sacrilegious one who steals a sacred thing from a sacred place, a sacred thing (ecclesiastical goods) from a non-sacred place, or a non-sacred thing (a deposit, money kept in church) from a sacred place. This last, not inelegantly, several ascribe to local sacrilege.

Therefore note that not every theft in a church is sacrilegious, but it is required that the thing taken by theft pertain in some way to the church, at least as kept there. Cf. Lugo, *Paen.*, d. 16, n. 476.

Various corollaries or scholia. 1. Not every violation of ecclesiastical goods is sacrilegious, but of those goods which are deputed to divine worship, insofar as they pertain to building and adorning churches, to sacred ceremonies, or to sustaining the ministers of the church as such. Not to hand over legacies left to the Church, or not to pay owed tithes, is not sacrilege, because they are not yet in the possession of the Church. To steal an ecclesiastical revenue already received by a priest is not sacrilege, because it has already come into his private dominion. But it will be sacrilege to usurp an ecclesiastical benefice, to steal Mass stipends not yet distributed, or common goods destined to feed religious. Cf. St. Alph., l. 3, n. 42; Ball.-Palm., II, n. 428. Lehmk., I, 523, is more severe.

2. Titius, bound by a vow of chastity, if he contracts marriage, is sacrilegious, because he receives a sacrament unworthily; at the same time he sins against religion insofar as he violates his vow. Moreover, whoever knowingly contracts marriage with a diriment impediment is sacrilegious insofar as he invalidates a sacrament.

3. Since a Greek priest is not consecrated to the worship of God by a vow of continence, his carnal sin contains an aggravating circumstance, but not the specific malice of sacrilege. Cf. Ball.-Palm., II, n. 391, from Tamburini, *in Decalogum*, L. 2, c. 6, §3, n. 3-5.

4. To use sacred books or sacred images for sordid uses, several, to whom Lehmk., I, 524, adheres, estimate as sacrilege. We think this is true, at least when they are whole, but not when they have been sufficiently destroyed by tearing. Nor will this be grave unless contempt is added. Moreover, those things are sacred which are destined to pious use.

5. Abuse of Sacred Scripture for pleasantries that are not filthy is sacrilegious; yet one does not sin gravely. Indeed, every irreverence can sometimes be absent, as if the occasion of the pleasantry is less the sacred text than the common version; for example if "the congregation of bulls among the cows of the peoples" is set forth as the most ancient congregation.

6. Omission itself, when it contains irreverence toward a sacred thing, takes on the ratio of sacrilege: as if you allow things which look proximately to the sacrifice to be very unclean, if you celebrate without sacred vestments. Lehmk., I, 522, 3; Ball.-Palm., etc.

7. Of itself, a sin committed on a feast day is not sacrilegious, although it is increased by an aggravating circumstance. Yet in a Christian society, certain actions peculiarly repugnant to the sanctity of the day can take on that malice, as if you disturb the sacred mourning of Good Friday by public games. A contemptuous intention can brand other actions, for example certain banquets, with this note.

Concerning the touch of sacred furnishings. the Code states these things in c. 1306, §1: "Care must be taken that the chalice with the paten, and, before washing, the purificators, palls, and corporals which have been used in the sacrifice of the Mass, not be touched except by clerics or by those who have custody of them." Understand touch by the bare hand. This canon permits tonsured clerics and even lay sacristans; this was the custom of several places. And a just cause excuses the venial fault of this contact; wherefore sacred vessels which must be handed over to a craftsman to be repaired are not to be execrated (S. R. C. 20 Apr. 1822: *Decr. auth.* n. 2620, and tom. IV, p. 223).

The prohibition does not affect merely blessed vessels, such as a ciborium after purification. While they contain the sacred species it would be mortal, without necessity, not merely to touch but to handle the sacred vessels.

The same canon, §2, adds: "Let purificators, palls, and corporals used in the sacrifice of the Mass not be handed over to be washed by lay persons, even religious, unless they have first been washed by a cleric constituted in major orders; moreover, let the water of the first washing be put into the sacrarium, or, if this is lacking, into the fire." These things also are a light precept. If a sacrarium and availability of fire are lacking, the water seems able to be put into a similar place, for example into the foundations of a chapel, into a cemetery.

Concerning the profane use of sacred furnishings. 1. By a general edict, c. 1296, §1, forbids sacred furnishings to be used for profane uses; and this urges more with respect to furnishings which must be blessed or consecrated and are used in public worship. As long as such a furnishing retains its consecration or blessing, to use it for common and profane use would be sacrilege. Moreover, that which has been used for indecorous uses or exposed to public sale actually loses its blessing or consecration (c. 1305, §1).

The principle itself is set forth in c. 1150: "Consecrated things or things blessed by constitutive blessing are to be treated reverently and are not to be used for profane or improper use, even if they are in the ownership of private persons."

2. A constitutive blessing of a sacred thing is distinguished from an invocative blessing, for instance of a house, ship, or animal, which in no way impedes the profane uses of the thing. Nor is every profane use of a sacred thing excluded with the same severity. Certainly to use blessed things indifferently for sacred and profane uses savors of a certain contempt to be blamed venially. But, on some occasion or for some cause, to drink blessed water (*acqua santa*) to quench thirst, to light a blessed candle for carrying out a profane work at night, to drive away flies with a blessed branch, to fill the room of a sick person with the odor of blessed incense, will not be a sin.
3. It will also more easily be lawful to use non-blessed things which mediately serve the sacred ministry, carpets, candlesticks, a basin, indeed also a towel, for weddings or for common honest use.
4. Sacred things wholly changed so that they have been reduced to common matter, for example sacred vessels by the melting of the metal, can be used for every use.

The ancient canons, c. *Ligna*, 37, and *Altaris*, 38, *Consecr.* D. 1, forbade that certain woods of a consecrated church be destined to any utility other than sacred utility. Today, however, c. 1187 permits that the church itself which can no longer in any way be used for divine worship, if every access to repairing it is cut off, be reduced by the Ordinary himself to a profane but not sordid use.

5. Concerning sacred things, for instance priestly vestments, which have merely lost their blessing, there is not, or has not been, one opinion. Some recognize light sacrilege in profane use: St. Alph. 1.3.41; D'Ann. III, 16, notes 36 and 37; others speak doubtfully: thus Lehmk. I, 524; others judge it probable that today the rigor has been so tempered that, setting aside

contempt or scandal, such things can be converted without sin into profane use. Wherefore it is lawful that, as the stones, wood, and remaining matter of a destroyed church are sold at auction for any uses whatever, sacred vestments consumed by use, with their form nevertheless changed, receive a civil or profane utility. Thus C. Gennari, *Consult. can.* ed. 2, II, p. 201-205, who confirms his opinion by the opinion of the Roman liturgical academy.

The action of the confessor must be such that he introduce no vain scruples, but, on the other hand, prudently inculcate reverence for every sacred or blessed thing, and not allow pious usages to perish which, although they are not strictly prescribed, nevertheless proceed from veneration of divine worship.

Penal sanctions. The delict [1] of sacrilege must be punished by the Ordinary according to the gravity of the fault by the general canon 2325, "without prejudice to the penalties established by law against" certain "sacrileges."

Special penalties. a) The penalty of excommunication most specially reserved to the Holy See is established against him "who has thrown away the consecrated species or taken them away or retained them for an evil end" (c. 2320). Besides, he is suspected of heresy, infamous by the law itself, and a cleric besides is to be deposed. - To throw away is not simply to place outside the ciborium or pyx, even with the intention of stealing the sacred vessel, but to scatter with contempt, either from the vile place where, or from the mode in which. - To take away, to retain for an evil end: this is to carry with oneself or keep at one's own place for an evil end of impious, lustful abuse, etc. - Since retention completes the taking away, he who takes away and retains is guilty of only one delict. - This delict is in no way committed by him who, lest he complete a sacrilegious communion, draws the host from his mouth and treats it reverently until he can restore it.

b) Violation of a church or cemetery is said to be punishable by interdict from entrance into the church (*Th. mor.* III, 913) and by other fitting penalties by the Ordinary (c. 2329).

c) Real injury against the Supreme Pontiff is punished by excommunication *latae sententiae* most specially reserved, and the guilty person is by the fact itself to be avoided; against the person of a Cardinal, Legate of the Supreme Pontiff, Patriarch, Archbishop, Bishop even titular, by excommunication *latae sententiae* specially reserved to the Holy See; against other clerics or religious of either sex, by excommunication reserved to the proper Ordinary.

For lay or non-exempt religious, the Ordinary is the Bishop or quasi-bishop of the place (c. 2343).

d) Violation of the privilege of forum (III, 12), completed by a daring act, c. 2341, according to the grade of the cleric, is punished either by excommunication specially or simply reserved to the Holy See, or by suspension from office reserved to the Ordinary if the guilty person is a cleric, or by penalties *ferendae sententiae*, if he is a layman (III, 12; 916, 8; 919, 5; 924, II).

e) The marriage which clerics in sacred orders or solemnly professed religious presume to attempt, even only civilly, and the persons who presume to attempt marriage with them even only civilly, is punished by excommunication *latae sententiae* simply reserved to the Holy See. If it concerns those professed of perpetual simple vows who presume to contract marriage even only civilly, or the persons who contract with them, the excommunication *latae sententiae* is reserved to the Ordinary (c. 2388) III, 137.

f) He who, not being a priest, simulates the celebration of Mass or receives sacramental confession, is punished by excommunication *latae sententiae* specially reserved to the Holy See, besides deposition *ferendae sententiae* if he has been a cleric. If he is a layman, let him be deprived of pension or office and be punished by other proportionate penalties (c. 2322).

g) Those usurping or retaining, by themselves or through others, goods and rights pertaining to the Roman Church are subject to excommunication *latae sententiae* specially reserved to the Holy See, besides penalties *ferendae sententiae* against clerics (c. 2345). - Those presuming, by themselves or through others, to convert and usurp ecclesiastical goods of any kind for their own uses, or to impede lest their fruits or revenues be received by those to whom they pertain by law, are excommunicated by excommunication simply reserved to the Holy See, from which they cannot be absolved as long as the injustice has not been wholly repaired, or such reparation seriously promised, if reparation is actually impossible. Besides, a patron by the fact itself is deprived of his patronage (c. 2346). Other penalties *ferendae sententiae* are added. - Those omitting, when it is required, the Apostolic beneplacitum for alienating ecclesiastical goods are punished by excommunication *latae sententiae* reserved to no one. Other penalties are added against those alienating illegitimately. Cf. *Theol. mor.* III, 923; *Epitome Iuris can.* III, 547.

[1] A delict is "an external violation of a penal law, done with evil deceit" (D'Ann., in C. J. [OCR uncertain: Sftih.], n. 6).

Article IV: On Simony

§ 1. Notions and Divisions

I. Notions. Simony is a real sacrilege of agreements which, in view of religion, are prohibited concerning a spiritual thing or a temporal thing connected with it.

II. Simony is distinguished as more strictly so called, or of divine law, and more broadly so called, or of ecclesiastical law. Cf. Laymann, *Theol. mor.* L. 4, Tr. 10, c. ult. n. 3.

Purely mental simony is done without an exterior pact; conventional simony is done through a pact; real simony is completed by at least partial execution of the pact. Before the Code, that was called mixed which was completed by execution on the part of one side only. Simony in the matter of benefices has customarily been called confidential, because it is committed through secret conditions contained in an agreement of an honorable appearance.

Simony of divine law is thus defined by canon 727, §1: "A studied will of buying or selling for a temporal price an intrinsically spiritual thing, e.g., Sacraments, ecclesiastical jurisdiction, consecration, indulgences, etc.; or a temporal thing annexed to a spiritual thing in such a way that the temporal thing can in no way exist without the spiritual thing, e.g., an ecclesiastical benefice, etc.; or that the spiritual thing is the object, even partial, of the contract, e.g., consecration in the sale of a consecrated chalice."

a) **A studied will:** i.e., not only deliberate, but choosing means: i.e., whether of an action in which the simoniacal intention is disguised (mental simony, or mixedly mental), or of an open agreement (conventional simony), or even of the handing over of a thing promised by agreement (real simony).

There are indeed some who understand studied will as put for deliberate. But then that definition, which the Code, because it was classical, used, would define the purpose of simony rather than

simony itself: as if you should describe theft as a deliberate will of taking another's thing. Nor does a reason appear why a condition common to every grave sin should be commemorated here. Nor would the delict of simony be touched, since it cannot be consummated by an internal sin. Cf. Ball.-Palm., *Op. theol.* II, 445.

The word studied itself, which of itself signifies application of the mind, seems to have been taken from cap. 11, C. I, q. 1, which thus begins: "He who studies to buy the house of God for a price." Suarez, *Rel.*, tr. III, L. 4, c. 1, n. 9, reports the various explanations proposed for this word.

b) **Will** is said rather than agreement. For although simony is formally consummated in an agreement, an express or formal agreement is not required even for the delict itself. But for the sin, the interior will already suffices. Therefore the words studied will seem to supply the word agreement, so that no necessity of an express convention can be alleged.

Of buying or selling; by these words is understood any onerous agreement, whether of exchange or of renunciation, even if not led through to effect, even tacit, "in which namely the simoniacal mind is not expressly manifested but is gathered from the circumstances" (c. 728). Therefore, as often as there is an intention of obligating from a pact that is not gratuitous, there is present the studied will which suffices for simony. Hence, before the Code, they distinguished simony as purely mental, without exterior pact; conventional, through a pact; real, which is completed by execution of the pact, at least partial. That was called mixed which was completed by execution on one part only.

Therefore, without a reciprocal agreement simony is not had. Wherefore he is not simoniacal who, merely under hope of gratitude, confers a temporal gift on him who, from gratitude, can confer a spiritual thing.

c) **For a temporal price.** The proper place of price is exchange, in which two things or performances are compared with one another, and the one is paid or performed as equivalent to the other. And most strictly there is a price if money is to be given, since price is said to be the value of a thing expressed in money.

In broader use, any gain perceived because of any performance of a thing or action can be called a price, even if, comparison being removed, it is not given as an equivalent.

A temporal price is that which comes into estimation in the order of human things: it can be money or a similar thing; praise, blame, recommendation, patronage; service or attendance. Hence it is called by the generic name of gift, and is distinguished as gift from the hand (money), gift from the tongue (recommendation, etc.), gift from service (attendance).

In order that one sin by simony, is it necessary that a price properly so called be exacted, or does even a price understood in broader use suffice? This will be gathered below from the weighed malice of simony.

d) **A spiritual thing.** Now the other element of simony, i.e., the thing which is forbidden to be sold, must be declared. Such in the first place is a spiritual thing.

A spiritual thing is understood as a supernatural thing ordered to salvation: whether it is formally such, as grace and the gifts of the Holy Spirit; or causally, as are the sacraments, preaching, sacramentals, prayers; or is the effect and use of supernatural power, as consecration, absolution,

dispensation, blessing, excommunication, election, presentation, confirmation (of nomination or election to an ecclesiastical office), conferral of a benefice, some act of ecclesiastical jurisdiction.

What about the communication of sacred knowledge? This is not reckoned spiritual. Wherefore a true price can be accepted for teaching theology, for handing on Christian doctrine to boys in school, just as profane discipline is handed on there. Yet one must speak otherwise concerning instruction which is directed to the sole spiritual utility of others, as catechetical instruction for preparing first communion. In the same manner a distinction must be made between counsels which are directed merely to the spiritual good of another, and counsels which give temporal instruction (cf. Ball.-Palm. II, n. 466).

N. B. The object of simony is had more strictly where a spiritual thing is conferred *ex opere operato*, as would have been the sacred power which Simon Magus desired to buy, than when a spiritual effect is conferred only *ex opere operantis*, or through the occasion of this, for instance through prayers, through preaching.

e) **Or a temporal thing annexed to a spiritual thing.** Therefore there are also things temporal in themselves which, because of connection with a spiritual thing, it is not lawful to sell. Yet not every connection brings this prohibition.

Before the Code, they distinguished temporal things annexed to spiritual things antecedently or by way of antecedent, i.e., which by nature were prior to spiritual things: vessels, sacred vestments with respect to the sacraments, the right of patronage with respect to a benefice; temporal things annexed concomitantly, or those which existed at the same time with spiritual things: labor in the administration of sacraments; temporal things annexed consequently, or those which follow a spiritual thing: revenues of a benefice, which are given because of the spiritual office.

Temporal things annexed consequently were said to be excluded from every sale; while, for the value of the matter, buying and selling of a temporal thing antecedently annexed was declared lawful (cf. c. 730), if nevertheless you except the right of patronage, whose sale is positively prohibited (c. 1470, §1, 6°).

Concerning a temporal thing concomitant with a spiritual thing, for example concerning labor joined with a spiritual administration, a distinction must be made between labor extrinsic, which is added to the performance and is not always necessary, for instance Mass to be said late or to be sung, or in a distant place, or at the nod of some person: labor of this kind certainly can strictly be sold or hired by him who already does not owe it from justice, by reason of his office; and labor intrinsic, which cannot be separated from the performance: for example the work, the time to be spent in celebrating Mass, etc. There was no small controversy concerning this labor, which seems to be resolved by this distinction: taken terminatively, that labor can be sold for no price, since it is terminated at the spiritual thing; considered in itself, why the very work expended cannot be hired and let just as the gold of a consecrated chalice can be sold does not at once appear.

Yet they rightly reply that in the case there is no question of hiring and letting work, since no labor but a spiritual fruit is sought, so that the labor is not estimable by price except from the work for whose sake it is undertaken. Wherefore if the work is forbidden to be venal, neither is the labor intrinsically necessary to the work permitted to be venal. Yet nothing would prohibit the sacred minister, if because of that labor he could not do another fruitful thing, from demanding

compensation for cessant gain. Cf. Laymann, L. 1, tr. 10, c. 8, n. 11, 12; Arendt, S.J., *De laesione iustitiae commutativae, in missae manuali stipendio alteri celebranti diminuto*, Parergon, p. 44, 45.

Positively, however, it is forbidden that you exact a greater stipend for saying Mass at a privileged altar (can. 918). Yet a priest does not exact more who, when he has received various stipends, reserves applications at a privileged altar for the richer ones and admonishes those seeking concerning the matter, provided he acts sincerely. But that manner of acting will easily be tainted by a certain appearance of cupidity.

In place of previously received modes of speaking, which were not so clear, the Code substituted clearer and fuller ones, distinguishing a twofold connection: one of individual or necessary nexus, for example such as an ecclesiastical benefice has, or the right of receiving ecclesiastical revenues, which necessarily calls for an ecclesiastical office: "a benefice because of an office"; the other, of participation in the contract, as if, in selling a consecrated chalice, you increase the price because of the consecration: this then becomes a partial object of the contract.

By the words of the canon, "a temporal thing annexed to a spiritual thing in such a way that the temporal thing can in no way exist without the spiritual thing," labor which cannot be separated from a spiritual action or administration seems to be included as an object of simony, which, moreover, already before the Code, the more common opinion held. Yet because of the general mind of the legislator, who is not presumed, unless he clearly states it, to define questions of this sort authentically, we think controversy can still be raised concerning this matter.

Simony of ecclesiastical law is "to give... temporal things annexed to a spiritual thing for temporal things annexed to a spiritual thing, or spiritual things for spiritual things, or even temporal things for temporal things, if this is prohibited by the Church because of danger of irreverence toward spiritual things" (c. 727, §2). Yet simony of divine law alone is strictly called simony. Cf. Laymann, *Th. mor.* L. IV, tr. 10, c. 8, n. 3.

Simony at least of ecclesiastical law is committed: 1. by exchange of benefices done by one's own authority or against other prescriptions (cc. 1487, 1488, §1); by private resignation of a benefice in favor of a third party or under a condition which touches the distribution of revenues (c. 1486).

2. By various payments or compensations which are imposed upon a cleric in the act of making provision of a benefice (c. 1441).
3. By sale of an office which is ordered to sacred things only extrinsically, as the office of Sacristan, of Oeconomus. For although, from c. 145, ecclesiastical office is to be taken strictly unless something else appears from the context of the discourse, nevertheless we think that the disposition of the prior law remains, which commanded the gratuitous conferral of such an office.
4. By demanding remuneration for labor expended in collecting and distributing Masses, unless the Apostolic See has conceded it. For manual stipends must be transmitted whole, from c. 840. (Cf. Ferreres, I, 375; but, contrary to what he judges, we do not think that he is simoniacal who for received stipends gives wages to celebrants, against the prescription of c. 827.)

5. By demanding, without the Bishop's permission, remuneration for the expenses of the celebration of Mass (c. 1303). (But he who demands a greater stipend than the conceded one seems to be unjust rather than simoniacal. Against Ferreres, I, 376.) Today, however, no simony seems to be committed by those who, for the value of the matter, sell sacred things, blessed things, things enriched with indulgences (cf. c. 1539, §1), although the indulgences in reality perish (cf. c. 924, §2).

§ 2. The Malice of Simony

1. St. Thomas, 2, 2, q. 100, art. 1, recognizes a threefold ratio of malice in simony: "because a spiritual thing cannot be compensated by any earthly price," since it far transcends earthly things; because the sale of a thing whose dominion is not had is not lawful, and the Pope himself is not lord but principal dispenser of spiritual things (l. c. ad 7); because it is repugnant to the origin of spiritual things, since they have come to us from the gratuitous Will of God. Therefore contempt of the transcendence of spiritual things and of their gratuitous origin, besides usurpation of perfect dominion, composes this malice. Yet especially injurious to a sacred thing is the equation of a spiritual thing and a temporal price. Commonly, moreover, they judge that in simony there is had a special ratio of real sacrilege, which, outside this case, they refuse to subdivide into other species. And because no gift of grace can become venal without grave irreverence both toward the gift itself and also toward God, and the quantity of the price does not change this irreverence, in simony of divine law it is denied that slightness of matter can be had. Yet often the smallness of the reward can prove that a simoniacal mind was absent.

2. In simony of ecclesiastical law no comparison is made of a spiritual thing with a temporal thing. It is therefore a certain extension of simony to cases not comprehended by natural law; but, since it is forbidden by the same motive, each simony is of the same moral species, namely real sacrilege. Although this simony admits slightness of matter. Yet in the forbidden exchange of two spiritual things there can be present an intention of temporal gain and an abusive usurpation of dominion over a sacred thing. Wherefore simony itself of ecclesiastical law can sometimes be vitiated by some simony of divine law. For this reason we preferred above to recount the examples of simony of ecclesiastical law as at least infected with this genus of simony.

§ 3. How and How Far Simony Is Absent from Stipends, Taxes, and Offerings

What is asked. There is in the Church a use of stipends, taxes, and offerings for sacred functions or performances.

Hence the question arises how these can be paid or exacted without simony.

1. **Notions.** Stipends are paid to him who has either promised to apply a Mass, or administered a sacrament, or discharged a sacred function. Taxes designate money which, besides compensation for the labor spent in writing a document, is exacted by a Prelate who administers law, grants a dispensation or grace. Offerings, outside those particular adjuncts,

are contributed by the faithful either freely or by compulsion: freely, as in certain places at the offertory in a funeral Mass, or those which are placed in boxes for various intentions, or even are found placed upon altars; by compulsion, as first-fruits once were and, where they are still in use, tithes. Stipends are paid to the minister working in sacred things; taxes to the Superior dispensing or granting a grace or administering law; offerings are paid either to a sacred person, the pastor, or to the universal or particular Church. Stipends [1] and offerings made to some person pertain, at least reductively, to the genus of recompense or wages, yet so that stipends are paid more for a particular service or administration, offerings more for services in general, for example of a pastor; taxes and offerings which are not owed to persons approach more to the ratio of a tribute.

2. **Permitted exchanges.** In the first place, compensations must be distinguished for performances which are accidental to sacred actions, or which are joined with them almost as a chalice with consecration. Such are singing, exterior pomp of Mass, the exterior apparatus of a sacred ceremony, the obligation of celebrating at a later hour, in a distant or inconvenient place, the very obligation of celebrating in a definite place or of acting as chaplain; compensation for use of sacred furnishings. For unless they are already owed from elsewhere by office, or unless the Church forbids certain things, as it forbids anything to be sought for the obligation of celebrating at a privileged altar, all these things can be exchanged for a price.

Yet the Church is accustomed, in order to remove every appearance of trafficking or cupidity of base gain, to impose upon these external adjuncts a legal price defined by custom or by competent authority. He who exacts anything beyond that just price is a violator of justice. Is he also simoniacal? Not a few think so. "The excess," say Ball.-Palm. II, 465, "is judged to be exacted for the spiritual thing and therefore involves simony." But this, at most, will be a presumption of the external forum. In the internal forum the mind of the agent must be considered. Nor do we think that he who at the same time asks what he could and what was too much is moved by an intention diverse in itself (cf. Lehmkuhl, I, 534).

3. **Concerning stipends, etc., for the sacred thing itself.** Setting aside every accessory extrinsic labor or expense to be compensated, it is indubitable among Catholics that stipends, taxes, offerings, according to approved usages, can be given and received without the sin of simony, since the Church cannot err in those things which, pertaining to the order of faith or morals, she herself does or approves. And in c. 730 an express declaration is read: "Simony is not had when a temporal thing is given not for a spiritual thing but on its occasion, from a just title recognized by the sacred canons or by legitimate custom." In this canon the words "not for a spiritual thing" are to be understood as if you said, not by way of exchange with a spiritual thing, or, as St. Thomas says (2, 2, q. 100, art. 1, c.), not by compensating a spiritual thing with an earthly price (cf. Ball.-Palm. II, 401). Nor can intrinsic labor itself, or labor inseparable from the sacred action, be compensated by a price, because, since the work as such has not been hired, the labor itself is estimated only from the value of the fruit or work, which is spiritual.

Now there is a question concerning the better explanation of a thing which is established as honorable. Not a few judge the same to be laborious and difficult. We rather adhere to Ballerini-

Palmieri saying, II, 403: "And the question, thus proposed, namely concerning the stipend which is owed to the worker, is sufficiently plain and free from difficulty."

We think that this question must be resolved thus.

By the witness of St. Paul, in 1 Cor. 9:7-14, even in the New Testament the Lord conferred upon one exercising sacred ministries a just title of sustenance: "Do you not know that those who work in the sanctuary eat the things that are of the sanctuary; and those who serve the altar share with the altar? So also the Lord ordained for those who announce the Gospel to live from the Gospel." Therefore, just as civil society owes congruous sustenance to those who discharge public offices, not otherwise the spiritual society or Church must feed those whom she herself deputes to the exercise of sacred ministries. But the supreme civil power defines the mode by which congruous sustenance comes to its officials: to some, for instance judges, it pays from the treasury a just annual pension; to others, for instance notaries, it grants a right of exacting stipends for acts to which they add public faith. And in a not dissimilar ratio, the ecclesiastical Legislator, who confers sacred offices pertaining to the Church, orders the mode by which provision is made for the congruous sustenance of sacred ministers. This mode has varied historically. Today it provides for that sustenance both through revenues of benefices, and through stole fees and various offerings, if there is question of pastors, and through Mass stipends and taxes and mutual performances of this kind.

Moreover that every stain of simony is absent from those performances is thus easily demonstrated. The dominion of God is not violated, since God Himself permits that the minister share with the altar and live from the Gospel; nothing is done against gratuity commanded by God, since the Lord Himself permits the correlative obligation of ministries and stipends or offerings, as is made manifest from the same sacred text. Therefore of the three malices which above, n. 278, we said were present in simony, the third, i.e., equation of a spiritual and temporal thing, which alone remains, is itself removed if, as Suarez says, *Rel*. tr. 3, L. 4, c. 46, money is given not by reason of the thing but by reason of the subject, i.e., it is not given as a price to be commensurated or commensurable with the ministry or labor of the worker, but "to the condition of the person needing a congruous sustenance proportionate to himself and to the family belonging to him, as is sufficiently clear of itself" (ibid.).

The proposed explanation squares perfectly with the conditions of c. 730. Let us recall the words of the canon. "The temporal thing is not given for a spiritual thing," insofar as no exchange of thing with thing is made, no "convention for a temporal thing under the ratio of price" (Suarez, l. c.). "By comparison of thing to thing," the Eximious Doctor thus continues, ibidem n. 10, "each gives and receives gratuitously, because he does not give one thing for another." - "But on its occasion." Insofar as the obligation undertaken by the sacred minister, for example of saying Mass, is not the juridic cause of the offering (cf. below, in the treatise on justice, the notion of juridic cause); nor is the money given to the priest the juridic cause of the priest's obligation. The juridic cause of the obligation, on the part of the priest, is an office either simply to be exercised because of an office undertaken, for example of pastor, or conditionally to be exercised when a stipend has been received, when there is question of the application of a Mass not yet owed; and the juridic cause of the offering, on the part of the faithful offerer, is the prescribed or spontaneous fulfillment of the office of feeding the one ministering to him. "Each," says Suarez, l. c., "from the debt of justice exhibits that which is of his office; for the very equity of justice demands that if one, from office or convention or by reason of stipend, is obligated from justice to minister, the other from the same debt of justice is

obligated to feed the one ministering to him." - "From a just title": i.e., of congruous sustenance, which St. Thomas and all indicate. - "Recognized by the sacred canons or by legitimate custom." For just as in civil society itself, the power which confers an office at the same time defines taxatively the mode of recompense, so it pertains to ecclesiastical law to define on what occasion, within what limits, a stipend of sustenance is to be paid. Hence St. Thomas permits a stipend for the sustenance of those "who minister the sacraments of Christ" according to the ordinance of the Church and approved customs.

Thus far concerning stipends properly so called. Moreover, the explanation of offerings is the same. Concerning the taxes themselves, this alone is specially to be noted: that they are demanded under a varied ratio: by way of sustenance of the burdens of the Pontificate, by way of a fine to be applied to a pious cause, by way of commutation, just as vows are commuted into alms (St. Alphonsus, L. 3, n. 96); and, we add this, so that a rich alms may supply a cause for dispensation which otherwise could be absent.

[1] Remuneration of service performed has the generic name of stipend, which was first used of military recompense. If the cause was not the value of the grace conferred or of the service performed, but the sustenance of the agent, it is called a stipend of sustenance (Suarez, *De Relig.*, Tr. 3, L. 4, c. 46).

Corollaries. 1. Gratuity is twofold: one which excludes only price, the other which excludes even a stipend of sustenance. The former is commended by the Lord saying (St. Matt. 10:8), "Freely you have received, freely give"; and at the same time thus instructing the disciples whom He was sending: "Remain in the same house, eating and drinking the things that are with them: for the worker is worthy of his wage" (St. Luke 10:7). These words not obscurely signify a stipend of sustenance. We are taught by canon 730 that this gratuity can suffice for excluding simony. And the people themselves, in common speech, acknowledge this gratuity, when they call Mass stipends by the name of alms. The Apostle ascribes a fuller gratuity to himself in the place cited above, 1 Cor. 9:7, and also when, 2 Cor. 11:7, he says, "I have preached the Gospel to you freely"; and the Church commands the same, when she excludes every stipend from sacred ordination, or when c. 552, §2, orders that the will of a girl be explored freely before the novitiate and before profession.

Moreover, because a sacred minister as such has the right to live from the Gospel, even a rich man can exact stipends.

2. When an act of sacred ministry is not already owed from justice, for instance application of Mass, there is added a contract which, when there is question of Mass, or of a foundation (c. 1514, §2), takes on the form of a contract *do ut facias*, because first, formally or equivalently, the stipend is given before the obligation of applying the Mass is undertaken. With the just title of sustenance and the general obligation of justice of feeding the priest presupposed, that convention is lawful: an agreement is lawfully made concerning a thing owed from justice. But that agreement does not create a title of justice as to substance, but confirms it and makes it actually exigible, by more determining, within the limits permitted by the Church, the person of the celebrant, the person paying the stipend, time, mode, intention, and the very quantity of the stipend. As Suarez says, *Rel.* tr. 3, L. 4, c. 46, n. 10: "through the pact a new obligation is not added, but that which is present is explained and declared." Bonacina, *De Simonia*, Q. VI, Punct. 2, has similar things.

3. This is also the advantage of the given explanation: that, with every dissimulation or far-fetched subtlety removed, we can profess the true intentions of the one paying the stipend and of the priest receiving it, such as they are in reality, or are perceived to be at first sight. What does the faithful ask? the application of Mass. What does the priest promise? the application of Mass. What is the means of obtaining it? the given stipend. Is the stipend paid, is the application done, for money? Distinguish: as a price, I deny; as a stipend of sustenance, I concede. This distinction belongs to St. Thomas himself: "the priest does not receive money as a price of the consecration of the Eucharist... but as a stipend of his sustenance," 2, 2, q. 100, art. 2 ad 2. The same distinction is used by Bonacina, *De Sacramentis*, Disp. 4, Q. VIII, Punct. VIII, n. 2. And does not the sacred text itself, when it permits, l. c., that the one announcing the Gospel live from the Gospel, manifestly affirm that it is lawful that something temporal be received for the very Gospel by way of stipend of sustenance?
4. Why, although individual stipends of Masses are accustomed to be a modest sum of money, is there nevertheless a grave obligation of saying individual Masses? For us the ratio is at hand: the will of the Church, which obliges the priest under grave obligation so that, having accepted the stipend, he exercise his priestly office of offering the sacred rite.
5. Sacred ministries, which are in the dominion of God, are committed to the Church to be dispensed and administered. Therefore in ministries on whose occasion the Church does not permit a stipend, the condition divinely required is lacking so that stipends may be honestly sought. Wherefore, although even then the malice of equation of a temporal thing with a spiritual thing is absent, nevertheless the two other malices which enter into the sin of simony are not lacking: usurped dominion of God; violated gratuitous intention of Him. For this reason we judge a priest guilty of simony of divine law who accepts a stipend for a bination Mass, or for the administration of penance or of another ministry which he ought to perform altogether freely.

Therefore St. Thomas, 2, 2, q. 100, art. 3 ad 2, logically distinguishing the poor from deputed ministers, attributes to these alone a right of stipend of sustenance; but he excuses the money which the poor accept so that they may pour forth prayers only because it is judged to have been given under title of gratuitous beneficence. "Those who give alms to the poor so that they may obtain the suffrages of prayers from them, do not give under that tenor as if intending to buy prayers; but through gratuitous beneficence they provoke the minds of the poor to this, that they may pray for them freely and from charity."

Scholia. 1. **Concerning other opinions.** The proposed opinion we have copied almost word for word from Suarez; it also perfectly agrees with the mind and words of St. Thomas. It is also contained in these few words of Lehmkuhl, I, 534: "Simony and indeed of divine law is to say Mass for money... Yet to accept stipends for Masses... is not simony, because a just title of sustenance is present. (For if something is given as a price, an equation of the thing performed with the price given is made; and this is absent if something is bestowed under title of sustenance; then, namely, the thing performed or the labor expended gives occasion of repaying something, which must in no way be taken as an equivalent.)"

Far otherwise, not a few, after Laymann, *Theol. mor.*, L. IV, tr. X, c. ult., n. 13, who nevertheless, we wish this to be noted, does not impose that explanation as necessary but adds it to the opinion of Suarez by the words "Nevertheless it can be explained otherwise," thought that to excuse stipends they had subtly to seek in the very agreement with the priest or sacred minister something which can be bought by a price properly so called. That this was sought by them in vain seems to us to have been well demonstrated by R. P. de la Taille in *Gregorianum*, 1923, *Les offrandes de messe*†, p. 358 ff. And even omitting this, an explanation of this kind cannot be approved by us: a) because it falsely supposes that money can be given only either gratuitously or as a price, and thus removes from the middle the title of sustenance, which, appealed to by the princes of theology, is not unknown even in civil society, as the distinction itself commonly used in vernacular languages between the words honorarium and salary proves; b) because in the case no exchange is present. For in exchange two things are compared with one another, whereas here the estimation is made from the common necessity of food (cf. Ball.-Palm., II, 461, end); c) because that fictitious commutative contract limps [1], since the grave obligation of one application of Mass is not fitted to the light matter of one stipend. Wherefore not a few supporters of the opinion which we disapprove denied the very gravity of the obligation. Palmieri, in the note to IV, 1012, admits the difficulty; and, no otherwise than Bucceroni, *Theol. mor.*, III, 621, finally and at last has recourse to the precept of the Church, so that in some way they come near to our opinion; d) because it is with difficulty composed with c. 730. The canon requires a title approved by the Church. But if in reality in the promise of the priest there is present an element which, according to itself, is exchangeable for a price, the positive recognition of the title by the Church becomes superfluous, which recognition nevertheless the canon requires. And it would have to be said in like manner in every sacred performance, whether it is promised by a deputed minister or by a private person. But this would lead us to conclusions practically impossible.

The things which we have said above suffice so that the stain of simony is absent from every stipend. Yet our explanation by no means excludes a special explanation concerning some performance of a sacred thing, for instance concerning the application of Mass. R. P. de la Taille, calling upon the historical view of sacrifices, thought a special and not inelegant explanation concerning Mass stipends should be proposed both in the recent and already celebrated work *Mysterium Fidei*, and in *Gregorianum*, 1923: that modern stipends perform the role of the offerings which formerly the faithful brought to the altar, and which, since at least in part they were converted into the Body and Blood of Christ and sustained the priest, no otherwise than the victims of the Old Testament, were judged to be offered to God by the priest as the mandatary of the offerer, and by God were given to the priests. This solution of the question was received with great applause by R. P. Beauduin, O.S.B., in *Les Questions liturgiques et paroissiales*, 1922, pp. 178-195; and indeed, far from every simony, it best preserves the ratio of the title of sustenance. We abstain here from a historical examination of the matter, since it is not necessary for our end. We observe only that this explanation cannot be proposed as universal, since through it the ratio cannot be given of a stipend which a non-Catholic offers to obtain the application of Mass, since not even through a priest can an infidel offer the sacrifice of the Mass; or of stole fees, which today nevertheless do not seem capable of being denied to be owed from justice, with attention to c. 463, §1, and c. 1410, by which they can also constitute the dowry of a benefice.

3. Through the faithful who pay a stipend, the ecclesiastical Legislator fulfills, at least in part, the obligation of justice of sustaining sacred ministers. Therefore under this respect those faithful can be said to be as it were mandataries of the Church in paying stipends. Things stand thus as if the Church receives stipends or other offerings, and then gives them to priests or sacred ministers. Therefore just as formerly she divided the common mass of goods through the hands of bishops among priests or sacred ministers, the poor, and churches, so now, even by means of stipends, she permits sacred ministers the direct reception of a congruous part of sustenance. And just as habitual reception of revenues is often connected with the obligation of saying several Masses, so accidental reception of money is connected with the accidental office of feeding, through the celebration of Mass, him or those for whom the Mass is to be offered. "Therefore the priest accepting a separate stipend represents the Church, which assigns to him the office of applying from justice, just as she permits Ordinaries, by accepting perpetual foundations, to constitute in the name of the Church a more stable office of applying Masses."

[1] In his learned and very useful historical-juridical study whose title is *Stipendia Missarum*, Prof. Vincentius Del Giudice, in c. 5, n. 5 ff., nevertheless weighing the matter more juridically than morally, demonstrates that every contract of exchange is impossible. He himself, however, n. 10, has recourse to mandate.

Applications. 1. In our opinion, simony of divine law is committed by exacting some temporal price for a sacred ministry if the title has not been recognized by the Church, even if the cause of sustenance is alleged.

2. Admission into religion is a spiritual performance, which therefore excludes a temporal price. Yet the Church in a universal mode permits that in Congregations of religious women a dowry of sustenance be exacted; indeed, in Monasteries of Nuns, the dowry must be exacted (c. 547). That the expenses of postulancy and novitiate can be compensated is clear of itself, since postulants or novices have acquired no right to the goods of the religion. A needy religion can also exact that from which a new professed can be fed. But if it has been opulent, the religious themselves have a right to be fed, so that by exacting compensation for food at least simony of ecclesiastical law would be committed; indeed, according to St. Thomas (4 S. d. 25, q. 3, art. 2, quaestiuncula 2 ad 7), simony of divine law. Yet this is controverted.
3. Mass legacies and foundations themselves cannot, contrary to what Wernz thought, *Ius Decret*. VI, 344, be made honest through a donation under a mode or condition. For that mode, considered in itself, as Del Giudice, *Stipendia Missarum*, c. 5, n. 9, very well observes, does not differ at all from the ordinary obligation. Therefore when it is constituted in favor of the giver or of another person and by the one burdened himself, the necessary gratuity for avoiding simony would be lacking, unless the explanation by the title of sustenance of sacred ministers, permitted by God and recognized by the Church, could be appealed to here also.

He is not simoniacal who is moved by a stipend to celebrate; - who redeems relics lest they perish or be profaned; - who removes by money an unjust vexation contrary to his own election, unless at the same time he wishes to obtain the positive help of the same person; - who by money entices another to exercise acts of piety or religion or of another virtue.

Yet, unless there is danger in delay, the Ordinary must be admonished concerning relics which stand for sale, so that he himself may provide. Cf. decree of Dec. 21, 1878, apud Ball.-Palm., *Op. theol.* II, n. 475, and c. 1289.

4. What must be said about poor persons who pour forth certain prayers for a fixed price, perform novena devotions for the intention of those paying?

Although neither here is there a properly so called equation of spiritual and temporal thing, nevertheless, because the poor exercise no spiritual ministry which confers upon them a title of sustenance, that usage, as is said in the place already alleged, 2, 2, q. 100, art. 3 ad 2, must be made honest by attributing to the donors the intention of gratuitous beneficence, under hope of the spiritual assistance of prayers. The promise of the poor person then can oblige only his fidelity.

But those who judge that the burden of an undertaken obligation can be compensated by money will not be alien from admitting a true agreement.

You ask to whom it pertains to define stipends and taxes.

1. a) The stipend of Masses is defined by the local Ordinary or, in the absence of his decree, by the custom of the diocese (c. 831). No priest, even an exempt religious, can exact more; yet more spontaneously offered can be accepted, and, unless the Ordinary has prohibited it, even less (c. 832).

b) Bishops, not Capitular Vicars nor, without mandate, Vicars General, define, even for exempt religious, the stipend which a poor church can exact from priests celebrating in it for their own advantage because of utensils and the other things necessary for Mass. The definition must be made in synod, or the chapter must be heard (cf. c. 1303).

2. a) Local Ordinaries compose for their territory, by counsel of the cathedral chapter, a list of funeral taxes or alms; nor can anything be exacted beyond it (cc. 1234, 1235).

b) For various acts of voluntary jurisdiction, or for the execution of rescripts of the Apostolic See, or on the occasion of the ministration of sacraments or sacramentals, the taxes to be paid in the whole ecclesiastical province are defined by the provincial Council or meeting of the bishops of the province; but these predefinitions are not valid unless they have first been approved by the Apostolic See (c. 1507).

Yet the tax for execution of a rescript which the Holy See itself is accustomed to establish in rescripts given in commissory form can always be exacted. But can this tax be accumulated with the tax of the provincial Council? Of itself, negatively; but the more useful can be chosen. Yet this must be gathered from the very tenor of the approved provincial taxation.

c) The taxation for judicial acts is defined by the provincial Council or meeting of the bishops of the province (c. 1909).

§ 4. Sanctions Laid Against Simony

1. C. 729 renders void by full right every simoniacal contract, and, in the matter of benefices, offices, dignities, the provision or nomination which follows thence, for example from presentation, even if, without the knowledge of the one provided, simony was committed by a third person, provided it was not done in fraud of the same provided person, for example to impede his otherwise certain promotion, or with him contradicting. "Wherefore," c. 729 thus continues, "1) before any sentence of a judge, a thing simoniacally given and accepted, if it is capable of restitution and the reverence owed to the spiritual thing does not stand in the way, must be restored; and the benefice, office, dignity, resigned; - 2) the one simoniacally provided does not make the fruits his own; but if he has perceived them in good faith, it is permitted to the prudence of the judge or Ordinary to condone the fruits perceived to him wholly or in part." For this reason, he who has promised either stipends for bination Masses, or, on the occasion of sacred administration, anything beyond legitimately admitted offerings, must not stand by his promises. Yet since a celebrated Mass or a sacred administration done cannot be restored, even today it is not established that anything must be restored by him who has wrongly received those remunerations, unless he has at the same time been unjust, as if he has demanded money for an administration which was incumbent upon him to do from justice, for example as pastor.
2. If a patron has attempted to transfer the right of patronage to another simoniacally, from c. 1470, §1, 6°, the right of patronage is extinguished.
3. "Those perpetrating the delict of simony in any ecclesiastical offices, benefices, or dignities: 1) incur excommunication *latae sententiae* simply reserved to the Apostolic See; - 2) by the fact itself they remain deprived forever of the right of electing, presenting, naming, if they have any; - 3) if they are clerics, besides let them be suspended (c. 2392)." - Since the delict is not fully perpetrated unless the effect has followed, the penalty is not contracted unless it has been perfected at least by the handing over of the spiritual thing. The old interpretation agrees (Laymann, L. 4, tr. 10, c. ult., n. 68 and 78).

All, even bishops, are declared suspect of heresy who knowingly promote anyone to sacred orders through simony, or who in the same way have knowingly been promoted, or who have simoniacally ministered or received other sacraments; clerics besides incur suspension reserved to the Apostolic See (c. 2371).

4. Those making gain from indulgences are punished by the fact itself with excommunication simply reserved to the Apostolic See (c. 2327).
5. Those variously delinquent concerning Mass stipends are said to be punished in c. 2321. Cf. III, 302.
6. Besides the obligation of restitution for taxes unjustly received, those who increase them are said to be punished in c. 2408.

Summary

Irreligiosity is opposed to religion by defect, whether it sins by irreverence toward God: temptation of God, blasphemy, perjury, and violation of a vow; or whether it treats sacred persons or things unworthily: sacrilege and simony.

I. - **Temptation of God** properly consists in a rash demand for divine intervention, although he tempts God more strictly who, as if doubting, wishes to explore the divine perfection or divine good pleasure: these are the two other ratios of conceiving temptation of God. And they distinguish express and tacit temptation; the latter lies hidden in the manner of acting. Moreover it is formal as often as someone with conscious rashness asks that God come to his aid or manifest Himself. He sins mortally of itself who, without a special divine instinct, absolutely wills or promises a miracle; generally only venially who without sufficient cause demands a miracle even conditionally. What is commonly called temptation of God, committed by one who rashly exposes his health, is rather presumption, whose gravity is to be estimated from the importance of the foreseen harm.

II. - **Blasphemy** 1. is an insult brought against God, whether in heart, or mouth, or deed, or insulting action. The reserved sin of blasphemy is understood of blasphemous speech alone, oral or written.

It is distinguished as direct, from a formal intention of dishonoring God, indirect, from the will alone of saying insulting things; they differ in degree, not in species; formal, material; simply insulting, heretical, imprecatory; that by which God is dishonored in Himself or in His saints and in sacred things: this can also attack the proper excellence of the saints; vulgar, which is conceived in customary utterances, and affected, which is conceived in studiously sought expressions.

2. **Gravity.** Of sins against religion, blasphemy is the gravest of its genus, so that in true blasphemy no excuse is to be drawn from lightness of matter. Direct blasphemy has as its root the appetite of vengeance against God; indirect, too swift anger or impatience. All formally infidel and impious writers are guilty of most grave blasphemy. Common use can add or remove a blasphemous signification from words. In order that there be blasphemy, these words must be said significatively, not merely historically or by way of jest. Those who, from anger against creatures or from custom, utter blasphemous words without attention to God, often seem capable of being excused from grave sin, although they must lay aside that custom. Blasphemies uttered in drunkenness, according as they are uttered mechanically or from a certain anger, will not or will be blameworthy in their cause.
3. **Vain usurpation of the name of God** is of itself a venial sin, graver or lighter according to the adjuncts.
4. **Imprecations against men** are often excused from grave sin when a serious will is lacking.
5. Let the **confessor** a) unteach errors; b) turn vulgar blasphemers away from the custom, by suggesting suitable remedies; c) more gravely rebuke parents or masters who blaspheme with scandal of children or inferiors. Lest sin be committed scandalously before children, formulas similar to blasphemies must also be avoided.

III. - **Sacrilege** 1. broadly is every sin against the virtue of religion; strictly it is violation of a sacred thing, irreverence which specially conflicts with its sanctity. But a thing or person is not sacred unless by a public institution, whether of God, of Christ, or of the Church, it has been dedicated to divine worship. Moreover, that sacrilege may be had, an action is required which is directly opposed to that sanctity, or contrary to a law which under the same ratio of sanctity prescribes or prohibits certain things. Violations will be estimated as sacrilegious partly from the very nature of the violation, especially when the sanctity is of divine origin; partly from the positive determination of the Church.

Sacrilege is customarily distinguished as personal, real, local, as if these were three ultimate species. Yet what specifically intervenes between local and real sacrilege scarcely appears. But in unworthy treatment of the Eucharist, a twofold sanctity is violated: the absolute sanctity of God, and the relative sanctity of the sacrament.

The sanctity of a person is more partial; the sanctity of a place more extrinsic and of positive law; the sanctity of a thing can be so total that every profane use is sacrilegious. Sacred is the very right of the Church in sacred places or things.

2. Grave of its genus, sacrilege admits slightness of matter. - Every contempt of a sacred quality is sacrilegious; and besides there is committed: a) personal sacrilege by every real injury inflicted on a cleric or religious of either sex, and by lustful pleasure of a cleric in sacred orders, or of a person bound by a public vow of chastity; perhaps also by violation of the privilege of forum; b) local, through actions by which a church, an oratory consecrated or endowed with public blessing, and a blessed cemetery are violated; i.e., through homicide, suicide, injurious killing in a sacred place, grave shedding of blood, impious and sordid uses, burial of an infidel or excommunicated person after condemnatory or declaratory sentence (c. 1172); then through violation of immunity and of the tempered right of asylum, insofar as they subsist; c) real, by unworthy reception, treatment, and administration of the sacraments; by carnal sin committed shortly after communion, or when someone celebrates, carries the Eucharist, or is vested for celebrating sacred rite; by profanation of sacred vessels and instruments which are at least blessed; by unworthy treatment of sacred images and relics; by abuse of Sacred Scripture; by theft of a sacred thing or of a thing committed to the custody of a temple. - Touch, by the bare hand, of the chalice with the paten, and, before washing, of the purificator, pall, corporal used in the sacrifice of the Mass, is prohibited under venial sin to lay persons who do not have custody of them; and the first washing is of itself to be reserved to clerics in sacred orders.

Profane use of sacred furnishings is prohibited; especially of that which is consecrated or blessed by a constitutive blessing, or which is used in public worship; for honest use of the remaining furnishings is easily excused. Moreover, sacred things wholly changed can be used for every use. And today sacred vestments, consumed by use, seem, with their form changed, capable of receiving a civil or profane use.

Scruples are to be removed by the confessor in this matter in such a way that nothing derogates from reverence for sacred things.

IV. - 1. **Simony** is a real sacrilege of agreements which, concerning a spiritual thing or a temporal thing connected with it, are prohibited in view of religion. It is distinguished as of divine law, when, by tacit or express agreement, a temporal price, money, words, services, is promised or given for a spiritual thing or for a temporal thing which can in no way exist without the spiritual thing (c. 727, §1); and of ecclesiastical law.

Simony of divine law contains the malice of injurious equation of a sacred thing with a temporal thing; of usurpation of perfect dominion of a sacred thing; of neglected gratuitous intention of God's benefit (2, 2, q. 100, art. 1).

By ecclesiastical prohibition the sin of simony is extended to certain exchanges of things of the same genus, if this is prohibited by the Church because of danger of irreverence toward spiritual things. Yet they refer simony of divine law and simony of ecclesiastical law to the same genus, since the prohibition is commanded by the same motive of religion, while they acknowledge in each a special ratio of real sacrilege.

An agreement supposes a true obligation of the promissory party; nor is the mode or condition of a spiritual thing or work, appended to a liberal promise or donation of a temporal thing, simoniacal, at least if the spiritual work does not yield to the utility of the donor. - A spiritual thing can be such formally, gifts of the Holy Spirit; causally, sacraments, preaching, prayers; or effectively, or by way of effect of power, consecration, blessing. But communication of knowledge, even sacred, is not spiritual. A temporal thing which cannot exist without the spiritual thing is a benefice, or a right to ecclesiastical revenues.

Labor extrinsic joined with a spiritual action can be sold or hired; concerning intrinsic labor, or concerning the work to be spent in making a spiritual thing, for example in celebrating Mass, it is doubted whether it can be sold or hired; and when there is question of inseparable labor, it is commonly denied that it can be sold or hired without simony of divine law.

2. **Concerning the stipends of Mass and of sacred functions.** The long-standing use of the Church already proves it lawful that the faithful, with a stipend paid formally or virtually, acquire a right to the spiritual fruit of Masses and sacred functions, provided the stipend is offered and accepted under title of sustenance. How, without any simony, a priest who has received a stipend should be bound by commutative justice itself to apply the Mass to the intention of the giver: this they try to explain by various opinions. Which explanation is to be preferred is declared in the treatise itself. In our opinion, setting aside the intervention of the Church, or for functions for which reception of a stipend is not permitted, simony of divine law would be committed. It is also established from the use of the Church that stole fees can be honestly received by sacred ministers.

3. The stipend of Masses is defined by the local Ordinary, or, in the absence of a decree, by the custom of the diocese, even for exempt religious, so that no one can exact more; indeed, if the Ordinary has prohibited it, neither can he be content with less.

The local Ordinary, by counsel of the cathedral chapter, also composes the list of funeral taxes, beyond which nothing can be exacted; a bishop or quasi-bishop, in synod or after hearing the chapter, but not a Capitular Vicar nor, without special mandate, a Vicar General, also defines the stipend which a poor church can exact, for the expenses of celebration, from priests celebrating there for their own advantage (c. 1303). The other taxes must be approved by the Apostolic See (c. 1507).

The provincial Council or meeting of bishops defines the taxes for judicial expenses. The Holy See itself is accustomed to define what can be sought by Ordinaries for the execution of its rescripts.

4. He is not simoniacal who by money entices another to acts of piety or of another virtue to be exercised, or who sells a sacred thing for the value of the matter, or who removes an unjust vexation by money given, or who redeems relics lest they perish or be profaned, with the Ordinary nevertheless admonished, if opportunity is given.

5. The monies which are given to the poor so that they may pour forth prayers for certain intentions are to be explained by the intention of liberality. Cf. 2, 2, q. 100, art. 3 ad 2.
6. Simony at least of ecclesiastical law is committed by forbidden exchanges of benefices or by other similar acts.
7. A simoniacal contract is, from c. 729, null by full right, just as provision or nomination simoniacally obtained, even for another, unless the price was given in fraud of the provided person or with him contradicting. And the delict is punished by the Code.

Treatise III: On Piety

Chapter I: General Notions

Reason of order. After religion, by which the supereminent excellence of God, our Creator and Governor, is worshiped, those virtues obtain primacy which worship analogous excellences of men. A Parent approaches most nearly to God. Hence the virtue which is primarily toward him, or piety, must first be discussed.

Utility. A distinct understanding of the genuine ratio of piety must be acquired by us concerning the reason why not only parents and fatherland, but also wife, children, and we ourselves are the object of piety; besides, the mutual offices of parents and children, with their application to present times, must be well known, so that they can be inculcated firmly and efficaciously.

Order of treatment. After general notions have been set forth, we shall speak in order of piety toward parents, toward children, between spouses, toward the remaining blood-relatives; of quasi-piety between tutor and wards, of piety toward the fatherland, of man's piety toward himself (where suicide is treated).

What it is, and toward whom. 1. Now piety is a special virtue by which we cultivate the proper excellence of those from whom we draw origin.

2. a) There is an eminent title of piety in God, since, even in the natural order, He is a principle of being for us more absolutely and by an action more voluntary than any others; and in the supernatural order, by a deifying adoption, He willed us truly to be His children.

b) Then parents, by generation itself, and the fatherland, by the protection and guardianship by which it has guarded parents and ourselves, are truly for us a principle of being. Therefore the formal title of piety is primarily in them.

c) But because of unity with those parents themselves, we can and must venerate parents in a spouse, in children, in blood-relatives, in ourselves. Because "God Himself made us and not we ourselves" (Ps. 99, 3), we must venerate in ourselves not only the blood of parents, but also, indeed more, the image of God. And the spontaneous reverence by which we honor blood-relatives, and which, especially among nearer relatives, is a safeguard of chastity, itself testifies that the formal ratio of piety is participated by a spouse, by children, by blood-relatives, by ourselves. Nor in a dissimilar manner, because of the fatherland, is it participated by citizens; because of God, by the remaining men: in all men God has placed something divine; yet so that the title of piety is stronger in the saints, because they are more divine, and in the poor, because they turn the special solicitude of God toward themselves and bear the image of the suffering Christ, so that they are most of all the object of divine piety. Cf. *Quaestiones de religione*, etc., n. 178 ff.

Summary

Piety is a special virtue by which we cultivate the proper excellence of those from whom we draw origin. The formal title of piety is primarily in God, then in parents and fatherland; because of conjunction with parents, a title is participated by spouse, by children, by blood-relatives, by

ourselves, just as, because of conjunction with the fatherland, by citizens; and, because of God, by the remaining men: which last title is stronger in the saints and in the poor.

Article I: The Notion and Conditions of Injury

Notion. Violation of commutative justice receives the proper name of injury, and it is distinguished as personal and real, according as it directly regards the person, that is, goods of soul or body, or extrinsic goods. Each can be damnose, or a simple lesion without damnification, as if someone should take money from a chest where it was lying idle and then replace it in its place. Material injury is had whenever an action or omission lesive of right is committed; formal injury, however, when someone wishes to be injurious. Both can be per se conjoined, or per accidens separated, as if someone unknowingly kills a person, or if someone takes as another's what was his own.

Conditions of Injury. That an injury be committed, it is required and suffices that the right of one not consenting be violated.

"For injury is not done to one consenting." As no one can be unjust to himself, so neither to another who gives spontaneous consent to an action per se unjust; for he seems to act in this one's name. Besides, the active use of a right is a faculty: we use a faculty when we will. This principle is universal, so that it suffers no exception.

Nor is it an obstacle that there are inalienable rights: it is one thing to transfer one's right to another, another thing not to oppose one's right. Transfer is proper to an alienable right; non-opposition can be common to every right.

But in application, patrimonial rights are to be distinguished, whose disposition or active use can be in the power of another than the subject of the right, and rights strictly personal, whose disposition, inseparable from the person, is in the power of no one unless in the power of him whose right it is. The opposition of the former can be in the power of the tutor of an incapable person, while the others, during incapacity, are always judged to be opposed. Wherefore it is whole and entire for an adult to abandon a ship too full with certain danger of death; but no one can, in the same necessity, throw a sick infant into the sea. - Certain recent writers have imagined that consent concerning an inalienable right is invalid.

But that consent is not always given honestly, nor can it remove other malices besides the note of injustice.

Finally observe that, for the action of another to be injurious, it is not required that the owner oppose his right by a positive act, but it is enough that he does not positively consent.

— But unjust arts are two: violence and frauds. Yet between each there is this difference, that force brought upon a person in himself or in his goods is always per se unjust, while frauds are not unjust when, through them, aid, for example of knowledge, which is not owed from justice is merely denied.

But those things are per se opposed to justice which take away the free action or option of another by positive deception.

Unjust damnification is not made by omission, unless the other per se or from contract has a right to the action which prevents damage. Thus, for example, children or animals are to be guarded from justice lest they inflict damages on others.

Applications. 1. You ask concerning an action by which another is impeded from obtaining a good. Is it unjust? That future good is either owed from justice or merely hoped for. Its concession and acquisition can be honest, or be forbidden by moral law. These things posited:

1. The attainment of a good which is owed to someone from justice cannot be impeded by a voluntary action positively and per se without a sin of injustice and an obligation of restitution.
2. An action by which the attainment of a merely hoped-for good of another is impeded cannot be unjust from the object: hope is not a right. Therefore every injustice will have to be drawn from the mode, if the mode contains some violation of right. Unjust modes are force and fear unjustly struck into a person; lesion of reputation by detraction or calumny; damnification of another's thing, for example of a statue by which someone wished to compete for a prize; the lie itself, if and insofar as by deception it takes away freedom of action, as if someone, deceived about the time, can no longer appeal from a sentence or vindicate a prescribed right.
3. But if attainment of a temporal good is forbidden by a moral precept, no right to it which could be violated can exist, although the mode can be unjust. Suppose someone has detained a prostitute by force: he will not have to restore anything to her for the lost gain of the infamous commerce.

— But the mode can be unjust both with respect to him who hoped for the good and with respect to him from whom the good was hoped. Suppose beggars who hoped for alms from pilgrims. By force brought upon them or upon the pilgrims they can be disturbed from their hope. In the former case, no condition of injustice and restitution is lacking: according to the proportion of the hope, restitution must be made to them. In the latter case, he alone who wished to confer the good has been affected by injustice. Wherefore restitution is owed directly to him alone; but to the one hoping it is not owed except so far as it is necessary that satisfaction be made to the former. Now, in the case brought forward, the pilgrims are not judged to have had an absolute and persevering will of giving alms to those poor persons, so that nothing is to be restored to them. On the contrary, a will of bequeathing a thing by testament is thought absolute and constant. Wherefore the execution of the legacy is owed to him who would have been legatee by him who by force or fraud, not by mere prayers, impeded the testator from writing the legacy in the testament. But if the legatee was unworthy to receive the legacy simply or from such a testator, he will not have been unjust who revealed the unworthiness, even occult, to the testator.

2. Is he injurious who did not prevent the damnose effects of his own non-blameworthy action, for example if you neglect to extinguish a fire which arose from your non-voluntary negligence?

Injury and the obligation of restitution are to be affirmed, if a proportionate inconvenience does not excuse the author of the damage. For commutative justice forbids that our action deprive another of his things, and therefore commands that we restrain the damnose efficacy of the same, as long as we morally can. Yet because the cause was not blameworthy, already a relatively grave inconvenience excuses: that is, one which, considered in relation to the imminent damage and the faculty of impeding it, is not to be held as slight.

Wherefore, if the evil which you clearly say about Peter is understood of Paul, that present effect of your past action must be corrected from justice. Thus Molina, *Iust.*, t. 5, d. 40, n. 3; Lugo, *Iust.*, d. 15,

n. 6; Lessius, however, c. 11, n. 119, obligates from charity alone, because the cause of the confusion was not your speech but the error of others. This opinion is probable, if no occasion of erring was given by you. Yet, the involuntary error of the hearers being supposed, that damnose effect of your action seems to have to be impeded from justice, on account of the reason just made in this way. Therefore we think agreement must be given to Molina and Lugo.

Article II: The Notion and Obligation of Restitution

I. Notion. To restore, in this place, is to set someone again in the possession or dominion of his thing (2, 2, q. 62, art. 1). This restitution differs from restitution in integrum, which is a remedy of law by which someone recovers a lost condition or juridical faculty: as when, after the useful space of time has elapsed, one is permitted to appeal.

II. Remote Cause of Restitution. Damnose injury, and it alone, induces the positive obligation of restitution. Injury is to be understood whether formal or material, whether it has already been committed or would be committed unless restitution were made, as when someone from contract must return or furnish a thing. Moreover, it is damnose whenever it itself causes that someone has less than he ought to have from right. In that diminution damage properly consists. For if, by that injury, a thing which subsists has been taken away from someone, it remains in the dominion of the despoiled man and therefore must be returned to him. If this does not exist, or if the injury was damnose in another way, justice obligates us that by our action we impede no one from having his things completely. How shall we satisfy this debt according to our powers, except by rendering what morally is equivalent to the thing which he lost through us? But this is to restore.

Damnose injury alone induces this obligation. For if the injury was not damnose, what shall I render to him who has lost nothing? But if no injury has been committed, no one is deprived of his own thing. Cf. more, *Quaestiones de iustitia*.

III. Proximate Roots of Restitution. The obligation of restoring, which remotely arises from unjust damage, has two proximate roots: another's thing accepted, and the injurious acceptance of it. For by two reasons, that is, both because one's own thing has come to another, and because someone suffers damage from the injury of another, an undue inequality is introduced.

In the former case, the quantity to be restored is defined by the quantity of another's thing which someone retains in its proper species or in an equivalent: that is, as much as he has of another's, so much he must render. In the latter case, his obligation is measured by the quantity of damage which he voluntarily inflicted and therefore foresaw.

Each root can exist separately or concur. The former exists separately in him who possesses another's thing in good faith; but the latter in him who blameworthily destroyed another's house by fire. But they concur in the thief who retains in bad faith the thing taken by theft.

IV. Required Connection. Unjust damnification does not occur through every action, even an unjust one, but there must exist between the action and the damage which followed a sufficient nexus of causality. That is, the action must have true efficacy, physical or moral, upon the effect, and that by its nature. It is also required that, according to the gravity of the matter, the effect follow closely enough that it was to be avoided by moral and human precaution. This they are accustomed to express by saying: the effect must follow per se.

When the effect follows per accidens, but the action was done from an intention of harming, it is probably disputed on either side whether unjust damnification is had. And where there has been true influence, this seems to have to be affirmed. For the excuse of excessive difficulty in attending to the remote effects of one's own action does not profit him who does the action in order to harm.

V. Required Fault. We have already examined that nothing is owed on account of juridical fault alone. But what does he owe who has inflicted damage objectively grave with subjectively light fault? Various cases must be distinguished: a) Venial fault because of imperfect deliberation, or because of negligence lightly blameworthy, is not proportionate for begetting a grave obligation which the nature of the matter would otherwise demand. Therefore no obligation then seems to be present, not even a venial one. Cf. Lugo, *De iust.*, d. 16, n. 50. - b) If the fault was venial because the invincible error concerned the quantity of the damage materially taken, the greater amount is judged to have been inflicted involuntarily. And therefore there will be a light obligation of restoring the value at which he estimated the thing, for example a pearl thrown away. - c) If, although the price of the thing was known, for example 200 francs, he thought this to be light matter by invincible error, he seems to be held to restoring that quantity under grave obligation. For he voluntarily obligated himself to restoring that sum; but the quantity of the obligation is to be estimated objectively rather than subjectively. Except if he thought the thing light merely relatively to the very rich possessor, but by no means according to his own means. Cf. Lehmkuhl, I, 1154. Then he will be held by the light obligation which he accepted. - d) If through several light damages, from forgetfulness, which is not easily to be admitted, he has arrived at grave matter without mortal guilt, he is not held by a grave obligation, although most answer more severely; yet he contracted and retains under light obligation the duty of restoring for the individual damages. On account of the diverse root of restitution, something else must be said of him who through several small thefts, without grave guilt, has completed grave matter: under grave obligation he must despoil himself of the grave matter which he retains in its proper species or in an equivalent.

Force of Error. What if he erred about the body of the damage? The matter can happen in two ways. Either, wishing to kill Titius, well known to him, by chance he kills Sempronius passing by. He must restore nothing: nothing to Titius, whom he did not kill; nothing to Sempronius, whom he damnified by mere chance. - Or, wishing to kill Titius, he directs a gun at this man, whom he thought to be Titius, and kills him. In this case, common sense itself with most theologians today says that the damage must be repaired, because the error can remove the personal injury, indeed, but not the unjust damnification which he consciously made. But the obligation of restitution does not extend beyond that which would be owed to the heirs of Titius: for that damage alone was voluntary. And there are approved authors who, at least if the error gave cause to the fact, with Lugo, d. 17, n. 75-77, and St. Alphonsus, l. 3, n. 629, exempt the same man from every obligation of restoring; and we cannot deny extrinsic probability to this opinion. Cf. *Quaestiones de Iustitia*.

Force of Doubts. A positive and probable doubt concerning the justice of an action is a doubt of law, to which the system of probabilism can strictly be applied. But a doubt concerning damage inflicted, or concerning the causality of one's own action, is a doubt of fact. Yet if after sufficient investigation the doubt perseveres, the obligation becomes uncertain, on account of which no one is to be despoiled of his own things.

But doubt concerning payment or restitution made is per se to be solved differently. For the value at issue is, as it were, a good uncertain among a few persons and in the possession of no one, which must be divided according to proportion. Wherefore the common opinion obligates to paying or restoring at least according to proportion, unless the probability of payment is much greater. More easily it can be permitted to a doubting debtor that he wait for the petition of the creditor, if from his silence the probability of payment is confirmed. Yet some think it sufficiently safe that he pay nothing, because his obligation is uncertain. "This," says Lehmkuhl, I, 1147, "although it does not seem able to be sustained by solid reason, and therefore I cannot positively counsel the debtor, is nevertheless useful for the confessor to know, insofar as in a difficult case the good faith of the debtor can more easily be supposed and left intact."

You Ask. When restitution cannot be made in a thing of the same order, must it be made in a thing of a different order? For example, must money be attributed for an irreparable damage of the body as such, that is, not considering the patrimonial detriment which followed from it?

Some affirm this with St. Thomas, 2, 2, q. 62, art. 2, ad 1, because there is some compensation, although imperfect; and restitution is imposed in the way in which it can be made. Others deny it, since there is no equation between goods of diverse orders, so that restitution must be called impossible. This reason seems to be preferred. Yet the sentence which condemns the guilty party to a monetary fine is just; wherefore all concede that money is owed after the sentence of the judge.

The furnishing of a thing of an inferior order cannot be compared with partial restitution in the same order, for example with partial payment of money owed. Yet another more specious reason is brought forward for the necessity of that imperfect compensation in another order: goods of a superior order, for example the integrity of the body, bring some convenience of human intercourse of which a man is deprived by mutilation; but when a sum of money has been obtained, that pleasantness of life is restored in part. But is there an obligation of justice to compensate subjective affections which follow damage? Then he who made someone sad would have to restore joy to him from justice. Yet several today, for example Tanquerey, III, 565, hold the opinion of St. Thomas as more probable. Prummer, II, 204; Piscetta-Gennaro, III, 485, 486, treat the matter sufficiently at length.

Kind of the Obligation of Restoring. Although the obligation of restoring is founded in the negative duty of not violating the right to preserve one's own things, nevertheless it commands the positive act of rendering, and therefore is to be held as affirmative. Thus we say with Lessius, *Iust.*, c. 7, n. 49; Palmieri, *Opus theol.*, III, 335, against Lugo, *Iust.*, d. 8, n. 8. Cf. *Quaestiones de iustitia*, n. 170.

But because the obligation is positive, it admits just causes of excuse or delay, to be examined later.

Summary

On Injury. 1. **What and of How Many Kinds Injury Is.** Injury is violation of commutative justice. According to the goods harmed it is distinguished as personal, which regards goods of soul or body, and real, which regards extrinsic goods. Material injury is committed whenever an action or omission objectively violates a right; formal injury, however, when one acts with an intention lesive of right. It can be damnose, or leave goods intact.

2. **Conditions of Injury.** a) That a right be violated; b) of one not consenting. - Moreover unjust arts are violence and frauds, at least when by positive deception they remove another's free

action or option.

No one is injurious by omission of an action which is not owed to another from justice.

3. **Applications.** a) He is injurious who impedes another from attaining a good to which that person has a right; or even from a hoped-for good, if the one hoping has been prohibited by unjust arts.

b) He is also injurious who has not impeded the damnose effects of his own action, unless he is excused by a relatively grave inconvenience. For then the action, previously involuntary, is judged to be voluntarily continued.

II. On Restitution. 1. To restore is to set someone again in the possession or dominion of his thing.

2. Damnose injury, and it alone, begets the obligation of restoring as a remote cause. For unless the author of a damnose injury has restored the harmed person into his right, this person will have less than he ought to have from justice, and this on account of the voluntary fact of another, which is contrary to the equality of justice. Again, nothing is to be rendered to him who, in a way at least imputable to another, has lost nothing.

3. The proximate roots of restitution are two: another's thing accepted, which, wherever it is found in its proper species or in an equivalent, is judged to cry out to its owner; and injurious acceptance of it, under which name comes every formal nature of damnose injury. That damage be imputed, it is necessary that it follow from an action which is not so remote a cause that it escapes human precaution.

4. A condition of the obligation is a) theological fault, since otherwise the necessary voluntariness is lacking. But the fault of light negligence or not fully deliberated negligence is not proportionate for restitution of grave matter. Under grave obligation, however, the deliberately unjust man will have to restore matter whose price he did not ignore, but which he thought morally light. Except if the error was founded in the riches of the harmed person: then he will be held under light obligation. He who through several light thefts has arrived at grave matter without grave guilt will have to despoil himself of grave matter under mortal fault; but he who has inflicted several damages without grave guilt will be held by a light obligation of restoring for each.

b) A sufficient nexus of causality between the unjust action and the damage; and one not too remote.

5. The obligation of restoring cannot be urged when there is a positive and probable doubt concerning the justice of the action, or concerning the damage brought about, or concerning the causality of the action. But if payment or restitution certainly owed is doubtful, the law of the equality of justice begets a certain obligation of restoring according to the proportion of the doubt, yet in such a way that restitution is not to be imposed on a debtor who wishes to follow the more benign opinion.

But error concerning the person voluntarily damnified seems by no means to impede the obligation of restoring.

6. Standing by natural law, an obligation of compensation in a thing of an order different from the damage inflicted is not demonstrated.
7. The obligation of restitution is positive. Wherefore it admits causes of excuse and delay.

Chapter II: On Piety Toward Parents

Offices. Species. Piety toward parents imposes on children love, which corresponds to conjunction and benefit; reverence, which corresponds to dignity and authority; and consequently obedience, which corresponds to the function of generating, since the generation of man is completed only by education perfected.

The two prior offices exist absolutely, are perpetual, and are defined by the divine natural law. The third has its root in the very necessity of children, exists of itself but less absolutely, insofar as parents are really set over the institution of children; it ceases when the necessity ceases; and, both as to the person to whom it is owed, and as to the acts which it embraces, and as to the space of time through which it remains, it is more determined by positive ecclesiastical and civil law.

The three offices are imposed by the virtue of piety, yet so that its own specific ratio is in each. Nevertheless love and reverence will very often be exercised or violated at the same time; and especially reverence will scarcely be able to be violated without an offense of love.

Besides, parents are neighbors toward whom, also by the common title, we must fulfill all the offices of charity and justice. And offices which pertain to personal relations will be commanded by a double title. Thus theft of a thing belonging to parents will of itself offend justice alone, but insult will be opposed at once to justice and to piety.

Finally, the intimate conjunction of persons, or the peculiar reverence to be preserved toward parents, brings it about that what would be light if committed against an external person becomes grave if done against parents.

Therefore some offices are proper to children; others are common offices of neighbor, and these are either separated from the former, or concur with the former, whether they remain in their own degree or, because of that admixture, they themselves are to be urged more severely.

I. Love. counsels unity and concord: concord in intellect, so that, with the right of truth preserved, children may incline to thinking the same as parents; concord in affection, so that the causes of rejoicing and grieving may be the same for both; concord of wills, so that children may strive to fulfill the wills of parents. It counsels besides efficacious benevolence, and obliges one to assist parents if they are in need to be relieved. As was said above, n. 85, parents who are in extreme necessity are to be preferred to all others; in another necessity, wife and children come first in order. Wherefore, to relieve the quasi-extreme necessity of parents, a child will have to make even great expenses: understand those which permit him to preserve his own state, and which, with account taken of his family, he can conveniently bear. Cf. Palm., *Op. theol.* II, n. 822. In this matter one can also sin by excess, as if a wife should despoil her husband too much in order to assist her parents.

A child sins gravely against the precept of love who gives parents a grave and reasonable cause of sadness, whether through hatred, or through actions which savor of hatred or aversion of mind, or through less good morals: by frequenting bad companions, neglecting studies, prolonging vigils outside the house, etc.

To the office of love it also belongs that children provide for parents when sick the timely use of the sacraments; that, according to their condition and the usages of the pious, they take care that suffrages be made for deceased parents; that they strive to fulfill their reasonable expressed wills, even after the funeral. They judge that a child sins gravely who by evil arts impedes parents from making a testament.

II. Reverence. demands esteem and honor. This is harmed by striking parents; and it is judged to be a grave offense if a child strikes a parent even lightly, or, even without the mind of striking, deliberately raises his hand to strike; it is harmed by disdain and contempt, through insults, reproaches, through even affected ignoring, if, because they are poor, they are not acknowledged. It would be otherwise if a child breaks off association with criminals because of a just cause, for example lest he himself be marked with infamy. And, except for the necessity of the common good, children cannot denounce even true crimes of their parents to a judge.

Which insults or reproaches are grave is to be estimated from the adjuncts: from adjuncts of education, morals, etc. A child will more easily be excused from grave sin who corrects parents acting less rightly or troublesome parents, who yields to impatience, but otherwise demonstrates himself well affected toward parents. And, although this is little to be praised, writers also think it tolerable that a child who has arrived at a very honored position dissembles knowing parents of humble condition, provided he sufficiently provides for their necessities.

III. Obedience. obliges children as long and insofar as they are under the power of parents. This power varies according to the matter and the age of the children.

As regards the salvation of the soul, children are always in their own right; insofar as they are conscious, they can always both embrace the true religion and practice piety in an approved manner. They must receive the counsels of parents reverently in this matter. Must they also follow them? This depends on the piety and prudence of the parents, and on one's own need, since a better counselor can be present or lacking.

As regards the election of a state, a definite state cannot be imposed by parents. Indeed, they themselves, with attention to their condition, must permit and procure for their children a sufficient possibility of choosing. But that children may embrace the state itself, parents must juridically consent: canonically certainly not up to the puberty of the children, which was the rule before the Code, and now perhaps, because of c. 89, up to majority or emancipation. From the very law of nature, when there is question of marriage, a child fails in reverence of itself if he does not ask the counsel of a parent; he fails in obedience if he enters upon nuptials to which, for a just cause, parents are unwilling to assent. Indeed, although it cannot be prescribed that children marry or contract a determined marriage, it sometimes happens that children are constrained by the office of love to make a marriage, because hatreds may be quieted or the poverty of parents relieved. "In the election of a state of perfection, it is often not expedient first to take counsel from parents, since flesh and blood do not grasp the things which are of the spirit; after the matter has been deliberated and firmly proposed, by accident it is often expedient to communicate the matter to parents, but not for changing the counsel" (Lehmk., I, n. 947). Also from the law of nature, those offices regard each parent, whether legitimate or only natural, yet so that of itself the will of the father is to be preferred to the will of the mother.

Positive laws concerning paternal power. define and complete more the indications of nature. By Roman law, paternal power belonged only to the father of the family, while more recent laws imitate natural law more. The Italian Code, title 8 of book 1, treats of paternal power; the French Code, title 9 of book 1.

Those laws at once sanction paternal power and surround with protection persons who, because of age, are weaker in mind. Today, among cultivated nations, paternal power, which formerly was so absolute that it was extended even to the right of killing children (at least immediately after birth), has become more directive than coercive, so that, except for the right of moderate correction, the father almost has to have recourse to the magistrate in order to inflict an afflictive penalty such as prison. And rather it obtains that unruly children are committed to certain special institutions which take care of their correction, with a sufficiently unequal success. Yet paternal power is customarily sanctioned by certain rights over the goods of children, and by a civil obligation by which capable children are bound to furnish support to needy parents.

The protection of weaker age consists especially in several incapacities which vary with age itself. In making juridical acts, they are either supplied by parents or tutors, or helped by a curator of goods. Usually, because this cause touches not only the contracting persons but also their families in the highest degree, full liberty of contracting marriage is customarily deferred longer.

With the explanation concerning the capacity for juridical acts which regard goods remitted to the treatise on justice, we shall briefly set forth what canon law, what the laws of Italy, France, and Belgium have established, noting besides the principal differences of other laws.

Canon law. The Code divides persons according to age into four classes: children, the impubes, pubescent minors, and majors. Children have not yet completed the seventh year: they are judged not capable of themselves, and, as such, from c. 12, are not bound by merely ecclesiastical laws, with the cases expressly excepted of annual confession and Paschal communion, if they have had the use of reason. Boys are judged impubes who have not yet completed fourteen years, and girls who have not yet completed twelve years. These, from c. 167, §1, n. 2, cannot cast a vote in canonical elections, nor, from can. 1224, choose burial for themselves; nor, from c. 1757, §1, give testimony properly so called in judgment (for they can be heard by force of c. 1758); nor, from c. 1795, §2, can they be assumed for the office of experts; and all who have not yet completed fourteen years are excused from penalties *latae sententiae*, and rather are to be corrected by educative punishments (cf. I, 282, 283, and c. 2230). Minors, before twenty-one years have been completed, who are exempt from fasting, remain in the exercise of their rights subject to the power of parents or tutors, except those acts in which law regards minors as exempt from paternal power. Thus c. 89, which in this way recognizes the principle of paternal power. That paternal power is sanctioned by legal domicile, which, from c. 93, a minor has with him to whose power he is subject; by the faculty of parents or tutor to choose burial for an impubes (c. 1224); of exercising, if they are Catholic, the right of patronage for the minor (c. 1456); of acting and responding in judgment for minors (c. 1648). The excepted cases are spiritual causes and causes connected with spiritual things (c. 1648, §3); entrance into religion, which lies open to those who have completed fifteen years of age (c. 555); marriage, which young men of sixteen years and girls of fourteen completed years can contract, although a greater age (c. 1067), besides a will concordant with parents (c. 1034), is counseled; quasi-domicile, which a minor who has passed

infancy can obtain; burial, which pubescent minors can choose for themselves (c. 1223); and the right of active voice in elections, from which only the impubes are excluded.

If, in judgment, there is conflict between the utilities of minors and of parents or tutors or curators, the judge assigns to them a curator through whom they may stand in judgment (c. 1648, §2). Those who have completed twenty-one years have the full exercise of rights; they are subject to all laws, at least general laws, except the law of fasting, from which, from c. 1254, §2, those who have reached the sixtieth year are exempt.

The Italian Code. After the perpetual obligation of honor and reverence has been laid down, a child, from the Italian Code, until majority at twenty-one years or emancipation, is subjected to the paternal power of parents. During marriage, this is exercised by the father; when the father is impeded, it belongs to the mother; when the marriage is dissolved, it pertains to the surviving spouse (art. 220). That power is sanctioned: a) by the right of assigning a residence to the child, indeed, of placing an unruly child, with the president of the tribunal assenting, in a house of education or correction; b) by the right of representing, in civil acts, children born or to be born, and of administering their goods. To remove errors or abuses, several things are provided: where the utilities of the children and of the administrator are contrary to one another, a special curator is put in charge of such business; for more dangerous acts, the solemnities of license, whether of the tribunal or of the praetor, are necessary; inheritances are not accepted except with benefit of inventory (*coi benefizio dell'inventario*); c) by the legal usufruct of the goods of a child, if you except certain things, especially those which the child acquires in military service or separate industry, or which are bequeathed or donated with a clause excluding usufruct (cf. 229). That usufruct is burdened with the charge of feeding, instituting, and instructing the children (230). This usufruct belongs to him who exercises paternal power; yet the mother acquires the same if, because of causes personal to him, the father has been deprived of the usufruct. The usufruct lasts until emancipation or the greater age of the child. But it ceases by the death of the child or by new nuptials of the surviving parent. To the father, however, it is intact that either by testament or by authentic act he impose on the surviving mother conditions to be observed in the education (even religious) of the children and the administration of goods; yet so that the mother can be dispensed from those conditions by the family council which the praetor (i.e., elsewhere, judge of peace) shall have assembled. Paternal power is dissolved, leaving aside here the case of abuse or of certain penalties, by greater age or emancipation of the children. But a child is emancipated either by marriage, or by a distinct act of him who has paternal power or, this failing, of the family council, provided he has completed eighteen years. Nevertheless, for marriage, the consent of parents or at least of the father is necessary for a son up to twenty-five completed years, for a daughter up to the age of twenty-one years. Parents failing, sons and daughters up to the age of twenty-one years need the consent of ascendants (if they dissent, the assent of the grandfather suffices) or of the family council. Yet recourse can be had to the court of appeal if the dissent of ascendants or of the family council is destitute of a just cause (cf. art. 67). That paternal power is conceded over legitimate children and over acknowledged natural children. Civil effects are generated by civil marriage alone. Contrary, however, to France and regularly to Belgium, civil law does not sanction an obligation of contracting first before a civil magistrate.

France and Belgium use almost the same regime. Yet, in both regions, children already fifteen years old can be emancipated by parents (but not by the family council); the legal usufruct ceases when the

children are eighteen years old. In France (law of June 21, 1907), those older than twenty-one years no longer need any consent for celebrating nuptials. Yet they must seek the consent of parents up to twenty-five completed years. But, that not having been obtained, it is enough that through a notary they give notice concerning their future marriage. If parents dissent, the consent of the father suffices. Parents failing, consent devolves upon the nearer ascendants of each line, so that in the same line the will of the grandfather prevails; but if each line dissents, the dissent is held for consent. But those older by birth must notify nothing to ascendants. Ascendants failing, consent is to be furnished by the family council (*Conseil de famille*). If the child is illegitimate, consent must be furnished by the parent by whom he was acknowledged. If he has been acknowledged by each parent and these dissent, the consent of him who exercises paternal power suffices.

In Belgium, the consent of parents is required up to twenty-five completed years. Yet those older than twenty-one years can bring the cause to the tribunal, which will pronounce concerning the reasons of the parents. After that age, counsel must be sought; and when consent has been denied, they must, by a "respectful" act (*acte respectueux*) which the notary presents, insist on obtaining consent. Yet when consent has again been denied, the marriage can be celebrated without consent after a month has elapsed.

The principal varieties of other laws to be observed:

1. **Concerning the age of majority.** This is not everywhere twenty-one years. By the common law of Spain it is twenty-three years (in Aragon it is twenty completed years; in Catalonia and the territory of Navarre, it is twenty-five years). In the Argentine republic there are distinguished minors of fourteen years (who are all judged impubes), and adult minors (or pubescent minors) up to twenty-two completed years. In England, and also in the U.S.A. from common law, it is twenty-one years; yet in eleven States, daughters after eighteen years are of greater age.
2. **Concerning the modes and age of emancipation.** In Germany, not even through marriage is there emancipation properly so called; but a minor who has completed eighteen years can, with his consent and other conditions fulfilled, be declared greater by the tribunal of guardianships; by which declaration he is juridically assimilated to a major. In the Argentine republic, if you except emancipation for exercising commerce, which is done by consent of father or mother and public inscription in the commercial tribunal, the sole mode of emancipation is marriage. In England it is done by marriage or also by leaving the paternal house because of entrance into religion, military service, or domestic service; in the U.S.A. by valid marriage and consent of parents, if these no longer support the child.

A family council, which supplies the parents, at least through assistance furnished to the tutor in graver acts, is not had everywhere. Thus, in Germany, the province of the family council is entrusted to the tribunal of guardianships, so that only extraordinarily is a family council constituted (art. 1858 ff., Civil Code). But no mention of a family council is had in English or U.S.A. law; none exists in the Argentine republic, where it is supplied by the Ministry of minors.

3. **Concerning the subject of paternal power.** Sometimes paternal power is possessed by each parent, so that in case of dissent the opinion of the father prevails: thus in Germany, in the

Argentine republic; elsewhere, as in Spain, it pertains to the father and, he failing, to the mother; elsewhere it is lost by a widow if she enters a second marriage (either simply, or unless by the former husband before death it is continued to the widow even for this case); while elsewhere, for example in Venezuela, it is preserved even then, with the administration of goods excepted, unless this is confirmed to her by the tribunal; in the Mexican republic, paternal power is exercised also, in their order, by paternal and maternal grandfathers and grandmothers; while in the Chilean republic the rights of paternal power do not pertain to the mother. In England, the right of paternal power indeed passes to the widow, yet so that the will of the father concerning the religion of his offspring remains to be executed. Yet the tribunal has and exercises broad power of ordering matters otherwise for the better utility of descendants.

4. **Concerning the amplitude of paternal power.** Usually, besides direction of the person, paternal power also embraces administration of the goods of children. Yet not so in the U.S.A. and England, where the curator of the person and the curator of the patrimony are distinguished. Yet regularly the father, or, he failing, the mother, will be deputed by the magistrate to administer goods.

The legal usufruct of parents exists neither in the U.S.A. nor in England.

5. **Concerning liberty of marriage.** There are regions where, at least for Catholics, the canonical regime of marriage is acknowledged by civil law. Thus the Spanish Civil Code, which therefore reserves civil marriage to those who do not profess the Catholic faith. Besides, other regions are ignorant of the artificial institution of civil marriage, so that, in whatever form mutual consent is expressed, it validly joins spouses also in the civil forum, provided certain conditions are fulfilled. Thus, in the U.S.A., civil law of itself requires in the bridegroom the age of twenty-one completed years, in the bride, eighteen completed years. In several States, however, marriage between the pubescent is already civilly valid if consent is completed by cohabitation or by manifest undertaking of the offices of husband and wife. But other regions have imposed by law the juridical necessity of marriage called "civil." Thus in Germany, where it is required that the man be of greater age or declared greater, and that the woman have completed sixteen years. Other regions besides prescribe, not always under penal sanction, that civil marriage be celebrated before religious marriage. Thus in the Chilean republic; thus in Argentina, where nevertheless no penalty strikes priests who have blessed nuptials not yet civilly celebrated.

At the same time, however, art. 1588 declares that the religious obligations concerning marriage are preserved untouched by the civil law concerning marriage.

Usually, up to a certain age, the consent of parents or even of the tutor must be obtained. Yet often this is not a condition of validity.

In some States of the U.S.A., but not in all, the consent of the father, or, he being dead, of the mother, or, if both have died, of the tutor of the person, is to be obtained for validity by a bridegroom who has not yet completed twenty-one years and by a bride who has not yet completed eighteen years. Nuptials celebrated before twenty-one years without the consent of the father (if the child is

legitimate) or of the mother (if illegitimate) are merely prohibited in Germany; and in Spain, nuptials made by a minor without the consent of the father, or mother, or paternal or maternal grandfather, or family council; in the Argentine republic, consent of the father or, the father failing, of the mother, is prescribed to be obtained by minors of twenty years; in the Chilean republic consent is prescribed up to the age of twenty-five years. In the Venezuelan republic no consent is to be sought from a man who has completed twenty-one years and from a woman who has completed eighteen years.

Sometimes the consent of parents can be supplied by the tribunal. Thus, in Germany, if the son or daughter have been declared of greater age, the tribunal of guardianships can supply consent. In England also broad power is possessed and exercised by the tribunal.

Finally, even after the age at which consent must be obtained, it happens that counsel must be sought for lawfulness. Thus, in Spain, the counsel of the father, or, the father failing, of the mother, must be sought.

Summary

Piety toward parents imposes on children two absolute offices, perpetual and defined by the natural law itself: love and reverence; from the very necessity of children there arises for them the office of obedience, which supposes parents set over the institution of children, ceases when the necessity ceases, and is more determined by positive human law. In those three offices its own specific ratio is in each; although they are often exercised together.

Nor do they destroy the common offices of justice and charity; indeed, when they concur with them, they urge the same more gravely. Love induces concord, effective benevolence (in the necessity of parents); and under grave obligation forbids a child to inflict grave and reasonable sadness on parents. Reverence demands an internal affection of esteem and an external signification of honor: it is harmed by disdain, contempt, shame, striking; gravity is to be weighed from the adjuncts. Obedience is to be furnished within the limits of the power of parents, yet so that the disobedient, as such, violate no title other than that of piety. Conscious children, as regards the salvation of the soul, are in their own right, so that they can always embrace the true religion and practice piety in an approved manner. Nor can a definite state be imposed by parents. Yet of itself parents are to be consulted concerning marriage; and a child sins against obedience who enters nuptials against a reasonable prohibition of parents.

There exists besides the civil institution of paternal power, which today is sufficiently similar almost everywhere, yet varies in various nations as to the faculty of contracting nuptials, the age and mode of emancipation, and rights concerning the goods of children.

Chapter III: On Piety Toward Children

Offices. Besides the perpetual debt of love, parents are held by a grave office of piety to feed and institute their children. And the vow of nature is that the offspring, whom they began to generate by common counsel and as if made one, they should with the same cooperation and similar unity feed and institute, or continue to generate.

In this work ascendants, according as they have the possibility, must supply for parents. Wherefore:

1. Parents must procure a good birth, also by a fitting solicitude for avoiding abortion or an acceleration of childbirth that is not necessary.
2. That they may preserve the honor of the offspring and his very reputation, if he is legitimate, they must acknowledge the offspring and call him by their own name, so that those sin gravely who expose the offspring in a hospital or public place. Yet they are excused by grave danger of life, reputation, or another grave necessity, provided they have turned away every grave danger from the physical life or religious childish institution.

Since foundling-hospitals lie open to all, an obligation of justice by which rich parents would be compelled to pay the expenses of support cannot be demonstrated.

Although several affirm the same, at least when abandoned offspring is supported at public expense.

For the public administration seems to have freely undertaken these cares; and it could undertake them because of the public utility of diminishing infanticides. Yet parents are seriously to be exhorted that, by repaying expenses, they exercise their piety toward the offspring.

3. To feed the offspring with her own milk is a natural office of the mother; yet this cannot be urged under grave obligation if the physical and moral safety of the offspring is sufficiently provided for, nor grave harms are to be feared to another's offspring, another's wife, another's family. A just excuse can also be taken from one's own weakness or necessary occupations.

But, of itself, both the pastor and the confessor should greatly exhort mothers to fulfill their parts, and not to imitate many worldly women who, from desire of worldly liberty or a vain fear of losing beauty, abdicate that function. For they inculcate this exhortation:

a) The bodily good of their own offspring, for whom the milk of his own mother is more useful than the milk of another person, and still more than the milk of an animal, at least if it alone is used. When, with war raging, necessity itself compelled mothers to give breasts to their offspring, fewer infants died, although mothers were nourished with less good foods. Nor can the cares of a solicitous mother be expected from another woman. b) The moral, spiritual good of the offspring. The question being omitted concerning contagion of vices and propensions through nursing, it is agreed that moral education is begun from the very beginnings of life, so that through the first six years of life the moral "character" is said to be formed. Therefore the disposition, prudence, and morals of the person who continually turns about the infant are of very great value. c) Cooperation in the sin of the nurse is to be avoided, if she, in order to feed another's offspring, is compelled gravely to neglect her own.

d) The public morals themselves, to which no small harm is done by that usage. For either a wife is separated from her husband, to whom in this way an obligation of continence is imposed and every faculty of corruption is permitted; or a girl is taken who has fornicated: she obtains no small money as if the wages of sin. And whether she was wife or girl, both grow accustomed to living richly and delicately, so that they conceive distaste for their own humbler condition and fare. Besides, by that venal manner of servitude, social peace is little strengthened. Therefore a mother must be said to sin gravely who, for a light reason, admits an external wet nurse in adjuncts which make a grave danger for the husband, or for the woman, or for the offspring. But if a grave reason is present for admitting a nurse, nevertheless she will sin gravely who does not try to avert those harms.

A certain manner of consulting for the physical safety of another's offspring is this: that a nurse be chosen who already for some time has been able to feed her offspring, so that this child, made stronger, may more easily bear another nourishment. And more mildly, as is clear, one must speak of mothers who, the wet nurse omitted, themselves feed their own offspring by an artificial manner.

By the office of piety parents are also obliged to apply at least moderate diligence so that they acquire goods by which children may be fed and obtain an inheritance according to their state. Therefore they sin both by their sloth, and by dissipation of goods, and by arbitrary denial either of a dowry or of an inheritance.

Yet to a child who has made an unworthy marriage or by his own fault has dissipated goods it will be enough to furnish a subsidy for indigence or necessary support.

Neither in the Italian Civil Code (art. 117) nor in the French Civil Code is an action conceded for seeking a dowry for marriage or for entering a state; but each Code sanctions a reciprocal obligation of support, which is owed with account taken of the necessity of one and the faculties of the other. Cf. Italian Code, art. 138-146. Unless the tribunal defines the mode, it is intact to the debtor of support either to offer a pension or to receive under his roof and feed the person to whom he owes support.

It is also necessary that parents furnish to children the possibility of learning art and letters according to their condition, while nevertheless taking care lest imprudently, i.e., without a peculiar cause, they wish to institute them more liberally than their condition bears and, deceived by vain ambition, prepare men impatient of their own lot, ungrateful to parents, harmful to the state. In today's adjuncts of our regions, a certain elementary learning seems to be procured for all.

When there is question of a natural child who has not been civilly acknowledged by the father, theologians judge it enough that he be instituted according to the condition of the mother.

More than the care of the body and of profane learning, parents must take care of the soul and spiritual salvation of children. Wherefore they must:

a) Negatively, turn occasions of sin away from them, for example a common bed, especially if they are of different sex; bad companions; and still more their own bad examples;

b) Positively, correct those sinning with gentle firmness; provide religious instruction for children; take care that, in due time and according to the mind of the Holy See, they approach the sacraments of penance and Eucharist, and frequent the same, much less impede timely and frequent access; bring

it about, according to their strength, that literary instruction be imbued with moral and religious institution.

Question concerning schools. Here belongs today the most grave question concerning the choice of schools. From what has been said, it is already clear that parents fail in their office who, when they have the possibility of a truly Catholic school, prefer another which brings less security for solid piety or pure morals. But, that we may say something more concerning the gravity of sin:

1. It will be grave for parents to send boys or adolescents to a non-Catholic school:

a) If proximate danger of perversion in faith or morals will not be avoided, whether because remedies cannot be applied, or because illicit things are prescribed: for example, that heretical prayers be recited;

b) If a grave danger must be sustained, as in a "neutral" school, unless a grave cause has excused, for example a very troublesome vexation of law, necessity of procuring a state for children, etc.;

c) If children are thereby deprived of positive religious education;

d) If, at least by external appearance, parents seem to favor a non-Catholic sect or indifferentism, or give a grave scandal of example which is not excused by the general rules.

2. These things set aside, the fault of those who choose a non-Catholic school will be able to be light, while a Catholic school is at hand, but with greater inconvenience, provided the teacher utters nothing against religion. For if he positively detracts from it, a graver cause of excusing is required. And it is necessary that what is lacking to public institution, parents try to supply by private institution.
3. As priests and counselors, we cannot sufficiently inculcate the most grave office of Catholic institution; and in every way we must add courage to those who determine, even to their own harm, to give abundant spiritual bread to their children.

As confessors we shall sometimes have to dissemble, lest a certain good faith of parents be disturbed in vain. But we shall strive to obtain this: that cautions be applied to diminish the danger, and that positive Catholic education be procured in some way. Cf. what Lehmk., I, 937-939, has concerning that argument.

N.B. The school so-called "neutral" harms adolescents most of all, who are placed under the continual action of teachers. For children depend more on parents than on schoolteachers; but youths more easily preserve the pious morals which they have put on, and are also helped by their aggressive propension to resist professors whom they know to be less well affected toward religion. But greater harms are to be feared from a false exposition of juridical or moral doctrine in higher schools, except that remedies can more easily be applied. Yet especially into those who excel in talent the frequent insinuation of error will instill a poison which will scarcely be fully evacuated in the rest of life. Nor do they receive now a light detriment from this, that they are deprived of the proposition of truth.

To young men who approach "general studies," or civil Universities, it is to be commended in the highest degree: a) that they frequently approach the sacraments; b) that they choose for themselves a stable, learned, and pious confessor, with whom even outside confession they may willingly

communicate difficulties; c) that they carefully choose for themselves friends of honest conversation, who may be a mutual help and add courage to them; d) that in certain literary or scientific groups they become accustomed to proposing and defending approved theses. Parents can help their children in this matter at least by counsel. Opportunely they should commend them to a trustworthy man; yet he will be able to do little if the young men themselves do not visit him spontaneously.

Sum. The Code, c. 1113, embraces the offices of parents excellently in this formula: "Parents are held by a most grave obligation of caring according to their powers for the education of offspring, both religious and moral, and physical and civil, and also of providing for their temporal good."

Since paternal filiation is not subject to direct proof, the status of a legitimate child is defined both canonically and civilly by presumptions. Therefore:

1. Canonically, from c. 1114: "Children are legitimate who are conceived or born from a valid or putative marriage, unless because of solemn religious profession or received sacred order, the use of a previously contracted marriage was prohibited to the parents at the time of conception."

Therefore observe that for canonical legitimacy it is enough that the child was born during marriage, although he had been conceived before marriage. But a putative marriage is that which has been celebrated in good faith by at least one party; and it remains such until each party has become certain of its nullity. Cf. c. 1015, §4.

Can. 1115, moreover, introduces these presumptions: "§1. The father is he whom just nuptials demonstrate, unless the contrary is proved by evident arguments. §2. Children are presumed legitimate who were born at least after six months from the day of celebrated marriage, or within ten months from the day of dissolved conjugal life."

Therefore the presumption of c. 1115, §1 is of law only (*iuris tantum*) (cf. I, 178), since it admits direct contrary proof; but it is strong, since it is overcome only by evident arguments.

Besides, what individual civil laws establish concerning this matter must be attended to.

That we may give examples:

The German Code similarly regards as legitimate children who are born during marriage, provided that, at the time of conception, the husband had cohabited with the mother; which cohabitation is presumed. But the time of conception is defined by the interval between the 181st (inclusive) and the 302nd (inclusive) day before birth, or even beyond, if the infant is demonstrated to have been carried longer (art. 1591, 1592).

On the contrary, by the Codes of France and Italy he is not civilly legitimate unless he was conceived during marriage. But he is presumed to have been conceived during marriage who was not born before 180 days from the celebrated marriage, nor after 300 days from the marriage dissolved or annulled (Italian Code, art. 60; French, 312). The husband, moreover, is judged the father of offspring who is conceived during marriage (Italian, art. 159; French, 312). But if the offspring was born before 180 days from the celebrated marriage or after 300 days from its dissolution or declared nullity, the husband or heirs can deny paternity, except in the cases foreseen in art. 161. (Cf. art. 169, Italian Code; French, 314, 315.)

The presumption of legitimate filiation in more than one civil law is of itself of law and concerning law (*iuris et de iure*). Yet in a few cases the Italian Civil Code admits the husband to denying paternity, i.e.: a) if, through the time in which the offspring is presumed to have been conceived during marriage, he proves that he could not physically have had carnal commerce with his wife; b) if through the same time he lived legally separated from his wife, and that without even a temporary interruption (art. 162, 163).

Legitimated children are of themselves equated with legitimate children. By the present canonical law, c. 1116, "By the subsequent marriage of parents, whether true or putative, whether newly contracted or convalidated, even not consummated, offspring is made legitimate, provided the parents were able to contract marriage between themselves at the time of conception, or pregnancy, or birth." (Therefore observe that it is enough that at one of the three times, even transitorily, this ability was present.) Although the Code is silent concerning another source of legitimation which before the Code was chiefly alleged, i.e., concerning legitimation by rescript of the Holy See, it must be said to subsist, since nothing has been taken away from the absolute power of the Pontiff. Moreover, the faculty of making offspring legitimate is customarily conceded to those to whom dispensation from matrimonial impediments is committed; but concerning him who possesses a general faculty of dispensing, c. 1051 establishes that use of the faculty at the same time legitimates the offspring; i.e., that as often as they dispense in an impediment, the offspring is actually legitimated, with adulterine and sacrilegious offspring excepted. The equation of legitimate and legitimated child suffers certain exceptions, by which the legitimated are excluded from the dignity of the cardinalate (c. 232), from the episcopate (c. 331), from the office of abbot or prelate nullius (c. 330, collated with 320, §2). A major Superior of a religion must be legitimate or legitimated by subsequent marriage (arg. c. 1117 and 504).

Adulterine and incestuous children are also excluded from civil legitimation. The ordinary mode of legitimation is the subsequent marriage of the parents. By an extraordinary way, with certain conditions posited, it lies open from the Italian Code, art. 198, through a decree of the king. The effects of each legitimation are the same. Cf. art. 201.

This disposition of law is sufficiently general, that children are legitimated either by subsequent marriage of the parents or by an act of public power.

Among several nations, as morals slide and through zeal for equality, attempts are made that illegitimate children may use the same right as legitimate ones.

Acknowledgment of children. Finally, in civil law, besides legitimation there is also the acknowledgment of a child by the mother and especially by the father, since he is of himself uncertain. Acknowledgment is one voluntary, another coerced. For today the previously absolute prohibition of French law concerning inquiring after the father is tempered. Cf. art. 189 of the Italian Code. Moreover, the effect of acknowledgment is limited to the parent alone who has acknowledged the offspring as his own; but it gives to the acknowledged one the name (of the family), the guardianship of the one acknowledging, and the right to support. Cf. Italian Code, art. 179-201.

Summary

Piety toward children induces a perpetual debt of love, which of itself brings with it the office of feeding and instituting children. And the vow of nature is that, by the unity by which the offspring

was generated, by the same it be fed and instituted. In this office parents are to be supplied by ascendants, according as the possibility will be given. Wherefore, parents must procure a good birth, a relatively honored place, through acknowledgment and communication of the name; secure foods of first infancy, especially through the mother's breasts; an honorable condition in society, and therefore an education in letters congruent with state. The gravity of the obligation is to be estimated according to the gravity of the harm to be avoided. Grave necessity, physical or moral, can excuse parents who commit offspring to a public foundling-hospital to be fed well and religiously; nor, even if they were rich, must they rigorously repay the expenses.

Parents must prudently remove occasions of sins from children, and positively provide for them a good moral and religious institution.

Hence, there is the obligation of choosing, if the possibility is had, a truly Catholic school; the grave prohibition of sending children to a school where a proximate danger of perversion in faith or morals remains for them; and the very defect of religious institution must be compensated otherwise. As counselors, we shall have to persuade toward better things; as confessors, we shall sometimes have to dissemble more things, lest worse things happen. In the estimation of danger, account must be taken both of the institute and of the talent and age of the child. Concerning the offices of parents, cf. the excellent formula, c. 1113.

Which children are legitimate is to be drawn canonically from c. 1114, civilly from various laws. Both canonical and civil laws admit legitimation by subsequent marriage of parents for offspring at least not adulterine or spurious. Besides, legitimation is had through a special act, which canonically the Holy See alone concedes. In civil law, acknowledgment of offspring by one or other or each parent, whether voluntary or coerced, also has a certain efficacy.

Chapter IV: On Piety Between Spouses

Mutual offices. By marriage itself spouses are united by the greatest bond of proximity, so that a spouse is preferred to the children themselves, and, except for extreme necessity, to the parents themselves. Wherefore spouses mutually owe one another love, cohabitation, support.

From the very natural law, confirmed by evangelical law, there belongs of itself to the man a certain authority which is more defined by positive law. Because the man is the head of the wife, she must obey her husband in those things which regard the governance of the house and good morals; yet he must treat the wife not as a servant but as an associate. But in the use of marriage, with the Apostle as witness (1 Cor. 7, 3. 4), spouses are of equal condition (cf. c. 1111). Wherefore each owes to the other the cohabitation necessary for that use, so that without a just cause it is lawful for neither to be absent for a long time. Moreover the wife must adhere to the man and follow him, provided she herself can do this without danger of life or health, and the contrary has not been explicitly or tacitly agreed upon, nor the husband after the nuptials has become wandering.

Those obligations are sanctioned by each law, civil and canonical. This latter also, with special law preserved, makes the wife a participant in the status of the husband (c. 1112). By each law, for certain causes, separation, whether temporary or perpetual, is admitted (cf. c. 1128 ff.). Several civil laws have attacked the firmness of marriage by perfect divorce: which canon law does not admit except in the case of the Pauline privilege, or of a ratified and non-consummated marriage which, for just causes, has been dissolved by the Supreme Pontiff. Cf. more where Marriage is treated, III, 812-822.

The wife can sin gravely by the usurpation itself of domestic power, if the husband is truly and reasonably unwilling. But a husband who, as a prodigal, has dissipated the goods of the family gives the wife a just cause for introducing herself into the administration of the house.

That it may defer to the authority of the husband, canon law assigns the domicile of the husband to a wife who has not been legitimately separated from her husband, permitting to the wife only her own quasi-domicile (c. 93, §2). Yet she herself exercises of herself the right of patronage (c. 1456); chooses burial (c. 1223); if an election is lacking, she participates in the sepulcher of the husband who has his own. Finally, insofar as a diminutive power over the will of the wife probably belongs to him, the husband can render the vows of the wife void (c. 1312, §1).

The modern question concerning the power of the husband. More than paternal power, marital power is attacked today. And, if they merely wished to correct a non-necessary consequence of incapacity for contracting, we can easily consent to that. Nor do we resist that adultery of husband and wife be punished with equal severity, although inequality can be defended by the greater social harm which adultery of the wife brings with it, since it renders the father uncertain.

But it is necessary that the pronouncement by St. Paul: "the head of the woman... the man" (1 Cor. 11, 3), be acknowledged and confirmed by law. The principle of this power is placed in art. 213 of the French Code, declaring that obedience is owed by the wife to the man; which word obedience is absent from the Italian Code (art. 130-137). Yet art. 132 honors the husband as head of the family.

The consequences of marital power in France are these. The wife participates in the nationality (this, however, is not true everywhere), surname, and residence of the husband; besides, in exercising paternal power, the authority of the husband prevails; finally, for various juridical acts she needs the consent of the husband, who has also kept a too broad power over common goods. The laws of Belgium, Spain, Portugal, and Romania agree. The recent law of Italy, July 17, 1919, wholly removed the incapacity of the wife for contracting. The law of England had done the same before, August 13, 1882. In the U.S.A. the wife remains fully capable, although, in certain States, the husband must cooperate in a few acts. In Switzerland and Germany, the wife remains fully capable. Yet if she herself has promised a personal performance, the husband, in Germany, can seek rescission of the act.

Summary

By a very strict piety spouses owe one another love, cohabitation, support; so that, except for the extreme necessity of parents, one must prefer the other to all other relations.

They are equal in the use of marriage; in other things there belongs to the husband, from natural and evangelical law itself, a certain authority, to which in the wife there corresponds the office of obedience, so that by usurped domestic power, if the husband is truly and reasonably unwilling, she would sin gravely. Yet she is an associate, not a servant. Of herself she must follow the man. There can be legitimate causes of separation; not, however, of perfect divorce, at least after marriage consummated between baptized persons.

Chapter V: On Piety Toward the Remaining Blood-Relatives

Offices. Of the other blood-relatives some are ascendants or descendants in the direct line, others collaterals. Cognates of the direct line are bound by offices of piety similar to those by which parents and children are bound, and that by reason of themselves, since ascendants have really given origin, and grandchildren and descendants have really received it. Yet the obligations are lesser in degree. These urge more strictly when parents and children are lacking, so that ascendants are as parents to grandchildren.

In the collateral line, piety chiefly imposes love and mutual aids. Wherefore the grave obligation of helping in grave necessity, which, as regards other neighbors, is disputed, cannot be doubtful among brothers. And civil laws also sanction the obligation of support among brothers. Yet theologians deny that, in order to relieve the poverty of a brother, a religious already professed must depart from religion. Among other cognates of the collateral line, there is now no grave obligation of piety, so that contrary sins are not judged to differ from a violation of common charity.

Summary

Among ascendants and descendants there exist obligations the same in species, but lesser in degree, as among parents and children. In the collateral line, piety imposes love and mutual aids; but a grave obligation is not extended beyond the first degree.

Chapter VI: On Quasi-Piety Between Tutors and Wards

N.B. The offices of a bishop and pastor with respect to subjects are also referred to religion and piety. Cf. what was said, III, nn. 87, 94, 292.

Division of persons. Persons who supply for parents or are legitimately substituted for them participate in the rights and offices of parents in reality. Some succeed fully in the place of parents; others are called by the parents themselves into a share of paternal solicitude. The former come under the name of tutors; the latter are called by various names, of preceptors, teachers, rectors of boarding schools, etc.

Therefore a tutor is a trustworthy person who supplies in a general way for missing parents for unemancipated minor children, or for interdicted persons.

From the canonical Code, a tutor acts and responds in judgment for a ward (c. 1648), and for an impubes ward can choose the church of funeral or burial (c. 1224, n. 1).

In the civil law of Belgium, France, and Italy there is distinguished a testamentary tutor, who is constituted by testament, or also, in Italian law, by an authentic act before a notary by the surviving spouse exercising paternal power; a legitimate tutor, whom the law designates; a dative tutor, who is chosen by the family council. When there is question of children, the testamentary tutor is preferred to the others, so that the dative tutor comes in the third place, yet in the second place, in Italian law, if the testamentary tutor has been excluded as incapable or excused. The legitimate tutor, in French law, is none except the surviving spouse; but in Italian law, the surviving spouse, since he or she exercises paternal power, is not called by the name of tutor. But legitimate tutelage is given to the paternal grandfather, and, he failing, to the maternal grandfather.

Since the utilities of the ward and of the tutor can be contrary, another trustworthy person is joined to him, who, in these cases, acts in the place of the tutor. He is called the substitute tutor (*subrogé tuteur*) in French law; but in Italian law, *protutor*; in canon law, curator (c. 1648). In French law, he is called *protutor* who administers goods which a minor, having domicile in France, possesses in the colonies; or goods which he possesses in France, if the minor dwells in a colony.

The office of tutor regularly cannot be declined, and is always gratuitous. The causes which dispense from the office of tutor and protutor are enumerated in art. 272-276 of the Italian Code; causes of incapacity, exclusion, and removal are indicated in art. 268-271.

Although there are several children, only one tutor is designated for all. For the law wishes to imitate paternity.

To persons so weak in mind that they are interdicted from civil acts, a tutor is also assigned according to the norms of art. 324 ff. of the Italian Code.

Beside the tutor is placed a family council, which directs and observes his administration, so that in graver acts it must furnish assent. Concerning certain matters of greater moment, the tribunal also must take cognizance by "homologating" or approving the decree of the family council.

To the tutor there is owed by the ward reverence, obedience, love of gratitude.

By his office the tutor must direct the person of the ward and faithfully administer his goods. In acts he represents the ward, or acts for him. The civil offices of the tutor are sanctioned by the obligation of rendering an account. Indeed, excepting the paternal and maternal grandfather, the other tutors, art. 303 of the Italian Code, must render an annual account of administration to the family council. Before, the office having ended, accounts have been rendered, no firm agreements can be made between tutor and ward (art. 307). In France, agreements, at least those which concern the management done, can be invalidated when the ex-ward seeks it (art. 472), and unless the tutor was from the ascendants, the legacies themselves or donations made to him from art. 907 are invalid.

Similar is the law of Spain. In the Argentine and Chilean republic, tutelage is conferred by parents, or by law, or by a judge. In the U.S.A. and England, the tutor who also administers goods, or curator of goods, is constituted by a judge alone. In Venezuela parents can assign individual tutors to individual children, or one for all or several. There is there a council concerning tutelage which must be heard by the tribunal whenever the tutor has need of judicial authority. Nor is the office of tutor there gratuitous. In German law, the father and then the mother who exercise paternal power can name a tutor by testament, and prevent certain persons from being named. The tribunal of guardianships confers tutelage from office, first in a certain legal order, then freely. It can also divide business, but not wards, among several tutors.

Mandataries of parents. By a certain delegation of parents, or mandate, those who are set over the institution of children have a share in the rights and offices of parents. Such properly are Superiors of colleges. Those who, under them, teach letters or watch over the morals of adolescents are judged to be mandataries of the Superior. Students must obey these insofar as they act according to the mind of the Superior or are set over some school; but more general obedience and connected reverence is owed to the Superior alone. Through contrary sins, institutors and Superiors violate quasi-piety and often justice; disciples are said to sin against observance.

Protection of the insane and of persons weak in mind. In canon law, those habitually insane are assimilated to infants (c. 88, §3), and they obtain the legal domicile of the curator or tutor (c. 93, §1). For them the curator acts and responds in judgment (c. 1648); which is also valid concerning those who are interdicted as to goods and labor under a less firm mind (c. 1650). A curator or tutor, constituted by civil authority, with the consent of the proper Ordinary of him to whom he has been given acceding, can be admitted by the ecclesiastical judge (c. 1651).

In favor of persons who are weaker, not indeed by age but by mind, positive civil laws have instituted protection of quasi-paternal power. And they are accustomed to distinguish those who, more fully incapable, are either detained in a hospital or pronounced interdicted (from goods): for these, in Italian, French, and Belgian law, a tutor is constituted who acts for them; and those who, too prodigal, are now prohibited from making contracts and expenses, unless a curator or "judicial counselor" assists them. For, at least in several laws, there is distinguished a tutor, who is immediately given to the person (for whom he acts), and consequently is set over the administration of goods, and a curator, who is set over merely conserving the patrimony, and assists the person who, because of age or weakness of mind, cannot prudently make graver acts. Thus, in Italian, French, and Belgian law, a curator assists an emancipated minor. Yet in the law of England and North America, he who is tutor of the person is not of himself defender of the patrimony, but *guardian of the person* and *guardian of the estate* are distinguished.

Besides, there are not a few cases in which provision is made by special curators. Thus, if the husband of a pregnant wife dies, a curator can be named for the unborn child (*curator ad ventrem*) (art. 236, Italian Code); a person who bequeaths goods to a minor can set a curator over these goods (art. 247).

Summary

Persons who supply for parents participate in their rights and offices. By law, the tutor succeeds in the place of parents in a general way, and is given to minors not emancipated or to persons personally interdicted (civilly); while the curator assists a weaker person, and rather guards goods. Besides, by a certain delegation of parents, those who are set over the institution of children have a share in the rights and offices of parents; indeed, also those who have adolescents committed to themselves for another end, for example of a craft.

Chapter VII: On Piety Toward the Fatherland

What fatherland is. The fatherland of someone is a legitimately constituted community, which surrounds, helps, and guards his family and person, not from some accidental fact, but of itself, in a universal way, and thus mediately assists his good birth and institution. Today it is usually at the same time bound to a territory, and sufficiently coincides with the political State, while in a tribe which wanders the fatherland can be detached from a territory, and once fatherland was said more of a city, of a town, than of a republic. That we may propose the matter more adequately, municipalities, province, state, a broader Federation which joins various States, can participate in the ratio of fatherland, and that unequally according to their various juridical condition and power. Wherefore, today, because of close civil unity, the proper place of birth is fatherland only in a secondary ratio; and the action and authority of province is usually less than that of place. Concerning Federation something is to be said otherwise elsewhere. Indeed, it can happen that in a broader use fatherland seems to exceed political boundaries. But it is not ours to discuss the notion of fatherland and the connected political questions.

Moreover, to the fatherland, or to that community, all offices of piety are to be exhibited. By love, we shall be impelled to peculiar affective and effective benevolence, and we shall try to foster concord of citizens; by reverence, we shall be led to that manner of acting, especially public, which procures honor and glory for the fatherland; by obedience, we shall become prompt for executing the commands of those who rule in the name of the fatherland.

The offices of piety can be violated by an action whose end is to be reproved, as one which tends toward dissolving the unity of the fatherland; or which pursues a good end by dishonorable means, as if recourse is had to violent and unjust arts, or the subordination of utilities is contemned, by which a political party is below the nation, and a city or province below the republic. And again difficult questions arise. For there are parts even of one republic which by their nature must be reduced into a certain new unity. Thus colonies at first preserve a close bond with the state by which they were founded, but gradually, as if emancipated, they wish to be in their own right. At what moment they can demand autonomy or independence will be defined with difficulty, and usually the knot will be solved by a certain political disturbance. Thus not rarely God converts evil into good. Yet it belongs to those who grieve that these things do not happen without sins.

Finally, when necessity or law urges, the offices of piety are intensified by legal justice, so that to the fatherland, insofar as it is a perfect community, certain things are owed which are never owed to the family, as when, in war, life itself must be exposed to certain danger.

The community itself, or those who rule it, must fulfill the offices of piety toward citizens, families, and lesser societies. And it happens that an imprudent or condemnable action gives cause for just complaints and prepares an excuse for a lesser society why it can legitimately strive toward effecting another unity.

Positive offices toward citizens, as such, seem to add no grave specific obligation to the common offices toward neighbor.

Summary

Someone's fatherland is a legitimately constituted community, which guards and fosters his family and person not by accident but of itself, and thus contributes to his good birth and institution. Today it is usually bound to a territory and coincides with the State. To that community all offices of piety are to be exhibited; indeed these, when necessity or law urges, can oblige more severely, so that certain things, for example the sacrifice of life, which are never owed to the family, cannot be denied to the fatherland. Chiefly to be commemorated here is the office by which citizens are held to exercising political rights for the common good; which office becomes one of justice in those who have assumed the function of deputies.

By the community or its rulers, offices of piety and distributive justice must also be fulfilled toward citizens, families, and lesser societies. But a grave specific obligation of piety does not seem to exist among the citizens themselves.

Chapter VIII: On Piety Toward Oneself and Suicide

Principle. Malice of suicide. Insofar as we have received existence, we are not our own, but in ourselves we must reverence those from whom we draw our origin. Wherefore we offend piety itself by acts by which we violate our nature.

Now our nature is violated by every grave sin, but especially by certain sins by which we misuse nature itself or some substantial part of it. Thus the lustful abuse of one's own body is called by the Apostle a sin against one's own body (1 Cor. 6, 18). But the greatest impiety toward oneself is committed by him who, by directly bringing violence upon himself, at the same time violates the dominion of God and acts against charity toward himself.

The suicide violates the dominion of God. For, while he destroys himself, he directly disposes of himself, or performs an act of perfect dominion. That disposition, in order that it be done honestly, supposes dominion, or a faculty made by the lord. But dominion is not ours, but God's. Cf. 2, 2, q. 64, art. 5, c. Moreover no faculty is shown to have been made by any trial, any misery, or any temptation of this life, since all these bear another and better interpretation. And in very truth, it pertains to man's essential dependence that man accommodate himself to the trials such as God, through circumstances, requires of him, and that in them he show himself patient and faithful. But he who brings violence upon himself violates that essential order of dependence under God, since he intends to change the generic character of his probation, and, by taking life away from himself, removes the fundamental condition of every service.

He violates charity toward himself. For he who loves himself wishes to be, which is the fundamental good without which no good can be conceived. But the suicide, as such, wishes not to be. Nor object that nothing directly against the life of the soul is attempted. For the soul is not the whole man; but suicide denotes the destruction of a man perpetrated by man.

This is confirmed by the fact that the suicide acts against natural inclination, which manifests to us the divine order, since every thing preserves itself in being as much as it can. St. Thomas, l. c.

The suicide also radically refuses to perfect himself, since he violently departs from the state of probation; and he denies all the offices which society can exact from him from legal justice. Wherefore he is unjust also to the community itself. Cf. St. Thomas, l. c.

This reasoning also holds concerning suicide by starvation. For this is not endured without a positive will by which every instinct of seeking necessary foods is violently repressed. And the fundamental law by which we are commanded to act on account of our good at the same time imposes upon us the action which is necessary for that good.

Active permission of death. It is one thing directly to kill oneself; it is another actively to permit one's own death by performing, on account of a proportionate cause, an action with which the probable or even most certain danger of death is joined. Thus soldiers, with their own death foreseen, can blow up a fortress, or burn or sink a ship, lest the enemy from the captured fortress or ship perceive great utility. The same is not lawful for avoiding one's own servitude, because then one's own death is directly sought.

To indirect, or actively permitted, killing of oneself is also referred the act by which a virgin, fleeing a ravisher, does not indeed stab herself through, but casts herself headlong from a high place; indeed, if violation is imminent, she throws herself down from the highest tower. But that she should rather suffer death than allow herself to be violated, on account of the danger of consent, is a matter even of counsel.

Likewise he merely permits his own death who, in order that others may be allowed to be safe, in the open sea abandons an overly laden boat, or yields a plank to a friend.

It is lawful also for a guilty man not to flee; indeed, to liberate others, to preserve the weak in good, to confirm them in the faith, it is right for him to offer himself to a tyrant, and, with the latter's sin, to permit his own killing.

Can a guilty man obey a Prince or judge by whom he is commanded to kill himself by poison, noose, or sword? That matter is controverted. Most deny that it is lawful, e.g. Lessius, L. 2, c. 9, n. 25; Lugo, *Iust. et Iur.*, d. 10, n. 11, because justice is toward another; some, as Vasquez, in 1, 2, d. 173, c. 3, at least when there is question of drinking poison, or of a less cruel death, seem to affirm it, because someone can bear a double person: that of executioner and of guilty man; nor is the relation of reverence and service toward oneself the same as toward a father. St. Alphonsus, L. 3, n. 369, Lehmkuhl, I, 733, and Palmieri, II, n. 862, note, hold this as probable. But it seems that it must be said thus: public power can never command the killing of oneself, because that cruelty toward oneself is required by no common good; and he who kills himself, as such, excludes himself from society and consequently does not cooperate with its good. But public power can command only social cooperation. Moreover, what it does not have power to command, here it cannot even permit, because permission concerning the death of a harmful man would take away the character of public vengeance and would attempt to render an intrinsically evil action lawful. For to permit a guilty man to kill himself is to give him the option of suicide or of execution.

Therefore God alone can refer that disorder to a higher end, and thus concede to someone that he take life away from himself.

What if you are commanded to drink poison already prepared? The drinking of poison denotes little more killing than a lethal blow or hanging does. He who drinks poison only immediately gives place to the specific action of the poison, almost as he who submits his neck to a noose or sword prepares the action of the executioner. Wherefore, in the presence of a killer prepared to compel, these three things, for forestalling violent inflictions otherwise inevitable, seem lawful.

From a sought danger of death it is not lawful to procure for oneself common utility, and much less gain. Wherefore rope-dancers sin who with great danger attempt certain things which, on account of the very danger, are received with applause; those also sin who test dangerous medicines, useless to themselves, upon themselves.

But if, independent of the danger, a sufficient utility is present in a dangerous attempt, or in the refusal of such food, e.g. of heretics, the action becomes honest and sometimes will be commendable. Thus he is praised who, with great danger to himself, casts himself headlong into a river to save the life of another who is in danger; thus those were not condemned who began to navigate in the air not without great danger.

On mutilation. Nor do we have dominion over a part of our person or our own body, which we have denied to be ours over the whole. Wherefore direct mutilation is intrinsically illicit. But mutilation is properly had when by cutting off some organic function or some use of members is suppressed. Therefore castration is mutilation, but circumcision is not, nor some accommodation of the body in a manner which is commonly judged to contribute to beauty: as if there is a custom of removing a certain extremity of the nose or ear. And light matter also is given, as if someone uselessly removes from himself one or another tooth.

Nevertheless direct mutilation will be lawful for saving the whole body or human life, because a part says order to the whole. Wherefore it is lawful to amputate a member lest the whole body be infected; it is lawful for someone to amputate his own arm by which he is bound to a chain, in order to flee a fire. The same seems to have to be permitted if the connection is extrinsic, for example that someone free himself from harsh servitude, that someone redeem death intended for him unless he make himself maimed in hand. For the same reason they admit that a virgin may disfigure her own face lest she be violated.

No one can tolerate castration for preserving chastity or conquering temptations, because that remedy is not necessary for that end and is often unfit. But if a man could be freed by a similar operation from an unusual and morbid force of concupiscence, we would judge that the operation, with another better way excluded, could then be done honestly. Wherefore, if in very truth by vasectomy someone is going to arrive at a just temperament, it seems to us that he can consent to the operation [1]. But it is utterly to be disapproved that public power impose an operation of this kind upon harmless men but weak in body or dull of mind, lest the less strong or those less strong in mind be propagated.

Female castration also is altogether to be condemned when performed for this end, that afterward the conjugal life may be exercised without danger of a harmful pregnancy.

Nor does the practice which once existed of castrating consenting boys seem to be praised or approved, that they might preserve a boyish voice and thus be able to take part in a singing profitable to themselves and not useless to the Church. For that is not necessary to the Church, since true adolescents can fulfill those parts in mixed choirs; but for men there are other profitable arts at hand. And how can boys give valid assent to an irreparable mutilation whose force escapes them? Yet because there is question of preserving the voice, St. Alphonsus, L. 3, n. 371, judged the more benign opinion not improbable.

[1] Observe that we speak merely conditionally, and pronounce nothing concerning the truth of the condition. For there is no lack of one who thinks that rather the opposite effect is to be expected from this "operation, which leaves the interior secretion untouched."

Care of health. We are forbidden directly to harm health itself, and we must preserve life safe by ordinary means. It is not doubted that parvity of matter can be had here. Wherefore:

1. Excesses in food and drink by which health is indeed injured, but not proximately and notably, even if they are grave against temperance, are not gravely opposed to piety or charity toward oneself.

The insane appetites for morphine, opium smoke (in China), cannabis smoke (in Africa among barbarians and Mohammedans), and, more recently, after the war, the taking of cocaine, which are so harmful to health that they prepare public calamities, are to be reproved with a much more severe note. Wherefore not a few laws have deservedly prohibited, by severe sanctions, either the abuse of opium, or hemp, or the sale of cocaine without a physician's order. Individual uses will not be able to be condemned of grave sin, but already in the individual cases there is had the danger of grave abuse and of a habit which will scarcely be able to be conquered. By diffusing, also and especially among adolescents and youths, the contrary spirit of mortification, these sensualities will best be forestalled.

2. It is lawful, yet not from the intention of shortening life, to exercise a useful art which is harmful to health. But if another way of making the things is available, this must be employed.
3. Because exterior penances have the immediate utility of taming the passions more, and thence, on account of several spiritual ends, both one's own and others', are holily employed, it is lawful to wear down the body by vigils and penances, even if some shortening of life and remote loss follows from this. And similarly, on account of an immediately useful effect, in vehement temptation it will be lawful to inflict a wound upon oneself from which blood may burst forth, provided the injury is reasonable and, with attention to the temptation, expedient. Yet it is wicked to use those chastisements which render someone unequal to fulfilling his office, or which notably or not remotely accelerate death. Indeed immoderate penances and abstinences can excite the body and increase temptations. And a prudent director will prevent also every bodily vexation which becomes suspect of someone's "Masochism" or painful lubricity.
4. For avoiding death no one is compelled to use costly and exquisite medicine, or, with domicile left behind, to seek healthier air outside the fatherland, or to conserve life by extraordinary and too hard means, e.g. the cutting off of a leg. Indeed they excuse the virgin who flees the hand of a physician or surgeon more than death. Yet it seems better to form such persons to reasonable command of themselves, lest they be struck down by terrors of this kind. - A father or Superior can command a less grave operation to be undergone.
5. A healthy Carthusian who lacks other foods, lest he perish from hunger, can and must take meats; but they probably permit that a sick Carthusian, with extreme danger of life, preserve his abstinence. For here they say there intervenes the reason of the common good, i.e. the strength of religious discipline; which reason is lacking in the rarer case of accidental need. To this add that life is connected by a much more certain bond with the only food which is at hand for a healthy man than with such quality of food as a sick man may take.

You ask what must be said concerning the use of hypnotic suggestion.

Whether a special sleep is admitted, or whether it is denied to exist, the hypnotic state designates the condition of a person who shows himself very docile to another's commands, to execute hypnotic suggestions either then or afterward. Is his obedience altogether blind and absolute, so that he is ready to do all things? This today is rather denied; but they say there are certain things from which the mind of a hypnotized person too much recoils for him to wish to perpetrate them; indeed they add that several ridiculous things, or even things bloody in appearance, are not obtained except because the hypnotized person is more or less conscious of the fiction. Very many persons, of both

sexes, can be placed in that state; yet some more easily and more profoundly than others, so that there are those who, affected by nervous disease, narrate or do things which in very truth can move admiration. Finally, even outside that state, unless it has been done honestly and prudently, hypnotized persons remain under a servile dependence, as they say, on him who hypnotized them.

Concerning these phenomena a threefold question is raised: 1. concerning the moral imputation of actions which happen in the hypnotic state; and we previously denied that those actions are morally imputable in themselves, at least as to grave guilt. - 2. concerning the honesty of the consent by which a person allows himself to be cast into the hypnotic state. And because it is unlawful rashly to abdicate one's liberty into another's hands, because hypnotic usages can harm health not a little and easily disturb the phantasy and mind, such consent is not honestly given without a grave cause and due precautions. And, as much as can be done, care must be taken that liberty remain substantially intact, and that no enduring power over the person be permitted to the hypnotizer [1]. With due precautions, sufficient reason will be given by a bodily or mental illness to be cured, excessive passions to be moderated, and also scientific studies judged useful by those truly skilled.

Without these precautions, the one consenting derogates from charity toward himself; but he who "hypnotizes" a non-consenting person, as one who harms his health, is proved to have violated the fifth precept.

Wherefore, by laws such as the Belgian law of May 30, 1892, exhibitions of "hypnotized" persons are prudently punished, and also the very use of hypnotism upon the insane or minors when performed by those who are not physicians or have not obtained a special license of the government.

[1] This difference exists between the sleep of a hypnotized person, whether it be called special or be held as merely common, and drunkenness: that, after awaking, he immediately becomes master of himself, while the drunken man of himself remains stupid or dull until he has digested the intoxicating drink.

Canonical sanctions. From c. 985, 5: "Those who mutilated themselves or others or attempted to take life away from themselves are irregular from delict"; - from c. 1240: "they are deprived of ecclesiastical burial unless before death they have given some signs of penitence... 3. Those who killed themselves by deliberate counsel"; - from c. 2350, § 2: Those who laid hands upon themselves, if death did not follow, "are to be barred from legitimate ecclesiastical acts and, if they are clerics, are to be suspended for a time to be determined by the Ordinary, and are to be removed from benefices or offices having the care of souls annexed in the internal or external forum."

N.B. Concerning the obligation of working, it was said in the first part, I, 488.

Summary

1. Because in ourselves we must reverence those from whom we draw our origin, we violate piety itself by acts by which we violate our nature: which happens in every grave sin, especially by the lustful abuse of one's own body. But the greatest impiety is committed by suicide.
2. For directly bringing violence upon oneself is to act against love toward oneself, since, as far as in oneself lies, one denies to oneself the fundamental good of life and further perfection, while one violently departs from the state of probation; besides, by taking life away from oneself, one removes the fundamental condition of every service, and thus practically casts aside the essential dependence of the creature under God; one contemns the divine order manifested by

the inclination implanted in every creature toward being; and one radically denies the offices owed to human society itself. This also holds concerning death sought by starvation.

3. Nevertheless it is lawful, on account of a proportionate cause, actively to permit one's own death by an action with which the probable or even most certain danger of death is joined. This is lawful for the soldier who sinks a ship useful to the enemy, in which he is being carried, lest it be captured; for a virgin who leaves a very high tower lest she be violated; for him who in shipwreck yields boats to others. It is lawful for a guilty man not to flee; nevertheless he does not seem, even when public power commands it, to be able to kill himself.
4. Nor is it lawful to seek private or common utility from the very danger of death as such; but if in an attempt positively dangerous, or in the refusal of such food, e.g. of heretics, there is present, independent of the danger, a utility of sufficient moment, the thing becomes honest and will sometimes be commendable.
5. Direct mutilation also is intrinsically illicit, unless it is done for defending the whole body or for saving life.
6. We are forbidden directly to harm health; wherefore excesses in food and drink are to be blamed at least venially; but to exercise a useful art necessarily harmful to health is not prohibited of itself. By a similar, indeed by a superior, reason of utility, exterior penances by which no necessary good is impeded are made honest.

The excessive desires for morphine, opium smoke, cannabis, and cocaine are more gravely to be blamed and seasonably restrained, since they prepare or induce not a few private and public evils.

7. We must preserve life by ordinary, not extraordinary, means.
8. The office of at once guarding one's own liberty and health forbids anyone, without sufficient reason, e.g. of curing disease or of truly scientific study, and without due precautions by which, e.g., enduring alien rule may be avoided, to allow himself to be cast into a hypnotic state. And otherwise the one hypnotizing would violate the fifth precept.
9. By ecclesiastical penalties, c. 985, 5; 1240; 2350, § 2, the act and attempt of suicide are punished.

Tractate IV: On Observance and the Mutual Relations of Superiors and Inferiors

Utility. Although there is not leisure to explain according to its merit the argument of the present tractate, which touches in no slight way upon the social question itself, nevertheless already a summary proposition of the relations by which, in the private and public order, superiors and inferiors are bound by mutual benevolence from their very offices, is very opportunely opposed today to haters and contemners of all authority, and to those disturbers of society who meditate and strive either to confound the orders of citizens or to separate them by deadly hatred.

Notion of the virtue. Observance is the virtue which honors the excellence of another. It was introduced on account of good governance. For every excellence denotes some aptitude for leading or governing others in some matter. The offices of this virtue are absorbed by piety, when there is question of honoring parents; by religion, when there is question of honoring God.

According to the diverse order of governance, the virtue varies specifically; whence political observance is distinguished from religious observance. But in the same order, the honesty and necessity of the virtue differ in degree but not in species. Wherefore the offices of observance toward a pastor and toward a bishop are of the same species. Cf. Lehmkuhl, I, 923.

Article I: On the Mutual Offices of Masters and Servants

§ 1. On Masters and Domestic Servants

I. 1. Household servants must acknowledge and reverence the domestic power of the master almost as children, at least those greater by birth. But if they are minors by birth, they are constituted in reality under the paternal governance of the master. Therefore in matters which regard the domestic order, and, if they are minors, their right institution, they must obey the master. And they are at the same time obliged to foster and show internal and external love and reverence.

Yet if, in certain regions, express agreement or usage more tempers the rights or power of the master, at least for servants greater by birth, and circumscribes them by certain acts, it will be enough that the servant furnish the things promised.

2. Besides, because of the wage agreed upon, they must serve faithfully. Nor can they break off the contract before the time or day set, without a very grave cause.

3. But if they depart before the day, of themselves they are not prohibited from seeking some just stipend for the time through which they have served. Yet the master then is not bound to pay the agreed wage pro rata, but it is enough that he pay the one departing before the time the lowest just wage; indeed, one departing unjustly is held for damages. Laws or received usages are accustomed to define these matters more, just as they order the forewarning which must be made.

4. Household servants must impede the grave damage of the master which they can impede. But if there is question of things whose care has been expressly or tacitly committed to them, they cannot be excused from restitution who permit damage to be inflicted, whether by strangers or by other servants. Otherwise, of themselves they do not have the office of watching over other servants, so that they are not bound from justice to report those same ones sinning or stealing.
5. Scandal or another grave inconvenience being excluded, on account of a denied just wage or fitting sustenance, servants are not prohibited from using hidden compensation. Yet let the confessor beware lest he easily advise this or even permit it, since servants are ready to exceed, and those arts grow into bad customs in them. If they have furnished services beyond what was due, it must be prudently judged whether they are considered to have undertaken those services gratis, as if they wholly of their own accord performed them, or, on the contrary, at least tacitly asked, from an intention of wage.

Among the propositions which were condemned and prohibited "as they stand, as scandalous and pernicious in practice" by Innocent XI, March 2, 1679, this 37th is read: "Male and female domestic servants can secretly take from their masters in order to compensate their labor, which they judge greater than the salary which they receive" (Denz. n. 1187). For so general a proposition would permit compensation even to the servant who freely, without necessity, had agreed concerning a stipend; even to him who, from charity, had been admitted to certain services; even to him judging imprudently. Such compensation can only cautiously be tolerated or excused. Indeed several stricter authors required the most common judgment of the skilled, or of a very learned man versed in moral matters. Cf. St. Alphonsus, L. 3, n. 522-524; Lehmkuhl, I, 1126.

II. 1. Masters themselves and Superiors are bound by offices of quasi-piety toward these servants. Therefore they are forbidden to permit them a proximate occasion of sinning, when they can impede it; to prohibit them from observing the precepts of the Church; to provoke them with injuries; to expel them from the house before the day. But if they have expelled them without a very grave cause, they must at least refund that which is of interest, and that which the judge has determined must be paid. For there are civil laws which oblige the whole wage to be paid.

2. Positively they must admonish and correct them, insofar as this can usefully be done; help them by good example; and beware lest they receive under their roof or keep corrupters of others; promise them a fitting wage and pay it seasonably, much less, as sometimes happens, extort borrowed money from them for their own luxury.
3. Of themselves, they are not bound to pay salary to a sick servant, nor are they compelled to bear the expenses of care. But usages must be observed, nor is it fitting that those who are of the family be treated rigorously, since, on the contrary, piety and charity persuade that these persons, beyond what is due, be surrounded with friendly benevolence.
4. If the servants are adolescents or minors by birth, the masters supply for parents, and they cannot cast off the office of human, moral, and religious institution.

§ 2. On Masters of Works and Hired Workmen

1. Both, the master as well as the workman, must observe justice in making and executing the contract.
2. Justice besides obliges the master to preserve safe both the person of the worker, i.e. his body and soul, and his honor; it obliges the worker not to injure the things or reputation of the master.

a) Therefore the master violates justice who, when he can pay more, promises an insufficient salary to a strong and fully useful worker; who does not apply fitting diligence to beware lest from the arrangement of the workshop, from the ordering of labor, some unnecessary danger impend to the health, life, or members of the worker. But detriments which cannot morally be removed must at least be compensated by a greater stipend. - He must also beware from justice lest, from the way in which things are arranged or from license permitted to others, the workers be in a proximate occasion of sinning.

Labor on a feast day, nocturnal labor, labor too prolonged, or that which in some way consumes the powers, apart from agreement, cannot be imposed without necessity and must be compensated by a greater price. An agreement, freely entered into, concerning labor of this kind, although often to be disapproved, nevertheless is not strictly repugnant to justice.

But if there is question of boys or adolescents, neither their own assent nor that of their parents excuses from violated commutative justice the manufacturer who demands of them works too grave, or too prolonged, or too stupefying to the mind.

b) The worker violates justice who injures the instruments, animals, or reputation of the master; who betrays a secret expressly or tacitly promised; who interrupts before the day the works promised.

Yet not rarely today, when a common strike has been declared, individual workmen will be compelled themselves to refuse works.

On strikes. From the end, strikes are illicit which happen for disturbing society, or for extorting a wage beyond the just sum, or any unjust conditions. From the mode, strikes are opposed to commutative justice: a) those by which, before the time established by free agreement, work is ceased, unless they happen for rescuing workers from unjust vexation; b) those which exercise unjust coercion of others. But that coercion is unjust by which, through force, fraud, threats, or strictly harmful means, the other workers are prohibited from labor; or by which the other workers are virtually interdicted from water and fire. From the effects, those strikes are gravely opposed to charity and piety toward the fatherland which happen for a cause not sufficiently grave, or whose happy outcome is too uncertain, or which are announced when a gentler way is available for attaining the intended end. But among the workers some are unwillingly compelled to carry out the strike, and these cannot be accused of injustice; others have a formal part in strikes, but are ignorant of their injustice: in good faith they are immune from formal injustice; others consciously cooperate with injustice: these sin, but, excepting damages which they have caused by their immediate cooperation, in practice they will scarcely have to be obliged to restitution, which for the most part they will not be able to make and which is easily tacitly condoned to them. Then there remain the authors and favorers of illicit strikes, who are guilty of very grave sin and often take upon themselves very grave obligations. - Cf. more in *Quaestiones de Iustitia*, n. 470-475.

The hiring of works is followed by a bond of closer nearness by which master and worker are joined one with the other: for to the essential society of men, a certain new union has been added. There follows also a debt of quasi-piety in the master, but of observance in the worker. For from the agreement itself, the master moves and directs the workers in order to attaining the end of the work; master and workmen breathe together toward one immediate end. These things cannot happen without some superiority and subjection, which necessarily generate mutual offices of quasi-piety and observance. Indeed, according to various circumstances and persons, those offices can be intensified or remitted; but they cannot be wholly suppressed.

But a certain imitation of masterly society, by which hired workers, in condition and affection, approach household members, is especially consonant with the vows of nature, since it introduces greater unity in the human race and diffuses greater happiness. Cf. *Quaest. de Iustitia,* n. 467.

The Code contains these two notable canons concerning the present matter.

"Not only parents and others who hold the place of parents, but also masters and sponsors are bound by the obligation of taking care that all subject to them or commended to them be instructed by catechetical instruction" (c. 1335).

"All, and especially clerics, religious, and administrators of ecclesiastical things, in the hiring of works must assign to workers an honest and just wage; take care that these same have suitable space of time for piety; by no agreement draw them away from domestic care and the study of thrift, nor impose upon them more work than their powers can bear, nor that kind which conflicts with age and sex" (c. 1524).

First also, in the international treaty of peace after the bloody war, declarations are read which protect the rights and utilities of workers.

Article II: On the Mutual Offices of Princes and Subjects

Office of the prince. Whoever conduct the highest affairs must procure the public good and contain themselves within the limits of their competence.

Office of subjects. Subjects are held by the obligation of subjection and reverence. 1. That subjection commands obedience to just laws, and forbids rebellion. But rebellion is properly had when an unjust overthrow of the existing regime is attempted. But injustice can be absent: a) if unjust vexations are such as give place to exercising the right of prudent defense, prudent, I say, and consequently with certain hope of a successful outcome; b) if the fundamental law itself has introduced a mutable regime. Yet unjust arts must always be avoided. Besides, the oath or sacrament of fidelity which has been made to a legitimate prince must be observed. Finally, piety and charity toward the fatherland also demand that, without manifest public utility, it not be disturbed by pursuits of revolutions even if not unjust.

2. Reverence imposes honor toward Princes and other officials according to their degree and condition. Against reverence one can sin gravely by interior contempt, if it affects the Superior, or the law as such. If it affects the person of the Superior insofar as he labors under such or such a defect or vice, the sin will depend on rashness of judgment. But by grave insult or detraction, by a denied sign of external honor when the Prince is to be honored publicly, if the

denial, from the circumstances, is held as grave contempt, just as by formal contempt of the law, one will sin gravely.

Those offices, which are inculcated not once in Sacred Scripture, e.g. Rom. 13, 1; 1 Pet. 2, 13 ff., are very opportunely recalled to memory today. Yet today there are several, with attention to the form of regime, who, as individuals, possess no authority; to whom consequently, as individuals, much less observance is owed of itself.

The same worship and charity toward the fatherland which impels citizens to exercise piously the offices of observance, and not rarely religion itself also, will move the same citizens to discharge their political rights in due manner. (Cf. what was said, nn. 148, 149.)

And circumstances can be such that a legitimate and innocent Prince, from the same virtues of charity, piety, and legal justice, ought to abdicate power and remit the sacrament of fidelity. For the public good must be placed before personal dignity.

Summary

I. **Notion:** by the virtue of Observance, through virtue the excellence of another is honored. It helps good governance, according to the various order of which observance itself is distinguished specifically as political and religious.

II. Hired servants owe the faithful execution of promised service; on account of a denied just wage, hidden compensation can be cautiously and prudently permitted to them. Nor can they think themselves immune from every signification of observance.

Household servants besides, if minors by birth, participate in the rights and offices of quasi-piety; if greater by birth, they must at least reverence the domestic power of the master; they must also impede grave damage of the master, yet they are not bound from justice to watch over other servants or denounce those stealing, unless certain things have been expressly or tacitly committed to them. According to laws, usages, and circumstances, the offices of observance can be intensified or remitted.

III. Masters and Superiors are held by negative and positive offices of quasi-piety, besides the obligations of justice flowing from the contract. If they have adolescents or minors as servants, they must supply for parents.

IV. The master of works and the workman must observe justice in making and executing an agreement. Besides, the master from justice must preserve safe the person, or body and soul, as well as the honor and reputation of the workman; this, when there is question of adolescents, can be dispensed by no assent of parents.

Nor can the worker injure the things or reputation of the master. Strikes must be judged from end, from mode, and from effects, although they are to be numbered among social evils, as wars themselves; nor do they bring forward few difficult questions of cooperation.

Although according to various circumstances and customs these offices can be lesser or greater, nevertheless a bond of closer nearness, and a debt of quasi-piety in the one hiring works, and of observance in the hired workman, necessarily follow the contract, since from the agreement itself

direction to the end of the work belongs to the master. But in the vows of nature there is a certain imitation of masterly society, by which hired workers approach household members.

V. **Offices of princes.** Whoever conduct the highest affairs must procure the public good and contain themselves within the limits of their power, even from justice.

Offices of subjects. They are held by subjection, which commands obedience and, excepting just defense, forbids rebellion; and by reverence, which exacts honor, and forbids contempt of the Superior as such, besides insult, detraction, and the denied external signification of honor. The sacrament of fidelity made to a legitimate Prince must also be observed.

Yet because not a few today, as individuals, can do nothing, they have title to much less observance.

Circumstances also can demand that a legitimate Prince, from piety itself toward the fatherland, ought to abdicate office and remit the sacrament of fidelity.

Tractate V: On Justice

Introduction

I. What Is Intended in the Treatise. This treatise can occupy too small a place in this manual volume. Yet it will by no means lack its peculiar utility, if it exhibits, as it were synoptically, the principles of conclusions, with a brief demonstration added; if it teaches especially how to distinguish what is required or advised by the very law of nature, and what is left to be defined by positive statutes; if finally it supplies norms for detecting the way by which human laws influence the offices of conscience. Therefore our effort will tend here.

II. On various positive laws. We must by no means dissemble that difficulty is increased by the very multitude of laws which today, among so many various peoples, are passed almost daily. Yet it is lawful to bring into a few genera the laws to which we must chiefly attend. For besides canon law, which is by far the principal for the moral theologian, it seems sufficient, for our intention, that we consider three genera of legislations: the Latin, which borrows many things from ancient Roman law and from European customs; the Germanic, which does not stand far from the preceding, but shines by scientific elaboration; and the Anglo-American, which, in several points, is distinguished from the others by more proper marks, although it itself has by no means been withdrawn from the authority of Roman law (cf. *Catholic Encyclopedia*, under the word Law (Roman), art. Jos. I. Kelly).

As far as the matter allows, we shall put the documents of natural law before positive sanctions. But where separation cannot be made, we shall bring forward Italian law as an example or specimen, while not neglecting a sober sketch of other laws: which, in this international Institute, did not seem to have to be passed over.

Yet let no one think that we are deceived by that error that we hope to instruct our readers in civil laws in a few pages. This alone can we strive for, which moreover of itself suffices: that the fundamental ideas, which can be called as it were the soul of particular laws, be communicated, and that a few elements of positive law be handed down by which the theologian may be able to perceive the state of the question concerning various cases of conscience, and to recognize the frequent necessity of approaching experts in law.

For the easier understanding of the juridical exposition, certain things remain to be observed. 1. The Code of France, to which Napoleon gave his name, by brevity of speaking and method of arranging matters, far surpassed prior Bodies of Law, so that it introduced a new method of writing laws, which almost all cultivated nations, indeed recently the Church herself in her Code of Canon Law, have imitated. And since it sufficiently expressed the juridical persuasions and propensions of the declining eighteenth century, and at the same time composed Roman laws and the customs of the Franks, or of Germanic origin, not only because of the political authority of Napoleon I did it become common to several peoples [1], but it also was author of the manner of ordering civil laws for several others, e.g. of the Brazilian republic and many States of Latin America.

Later Codes nevertheless did not omit to perfect the French accidentally. This, e.g., must be observed particularly concerning the Code of Italy. Besides, since the French Code sinned by the note of individualism, from the middle of the nineteenth century it had to be reformed or completed in France itself by several social laws.

2. While the Austrian Code is commended by solicitude concerning natural law, no other Code has been composed with more methodical preparation and long-lasting deliberation (of more than twenty years) of doctors and jurists than the Code which from the year 1900 began to rule the German Empire. Joined to that Code is the Law of Introduction, which sought accurately to define what could be retained from various particular laws. The promulgation of a Code of this kind had to exercise a certain force even in other regions; which is seen especially in Switzerland. For the Swiss Federation, from the beginning of the year 1912, is ruled by a new civil Code, which differs more than the preceding law from the Code of France; yet not so that we ought to separate proper Swiss law from the Latin. In Switzerland, moreover, besides the civil Code, there is a special Code of Obligations, to be consulted for contracts, and this, corrected in the first two sections, also obtained the force of obliging from January 1, 1912. In the Canadian dominion, the province of Quebec is ruled by its own civil Code, which approaches very closely to French law; while the other eight provinces, even in civil matters, use English law.
3. Concerning the laws of England and the federated States of North America, this must be observed: that by the name Common Law there is designated there the ancient English regime, resting not on written acts but on custom. This law, in each region, has often been derogated both by positive statutes and by jurisprudence which consulted equity.

Therefore, looking especially to the nature of the laws, by the name of Latin law we include the civil law of Latin America, Austria, Belgium, the Canadian province of Quebec, France, Switzerland, Spain, Italy, and Lusitania.

By the name of Germanic law, we designate the law introduced by the civil Code of Germany in 1900.

By the name of Anglican law, the law in force in England, in the eight provinces of the Canadian dominion, and in various parts of the British empire.

By the name of American law, the law of the U.S.A., if nevertheless you except the Philippine Islands and the State of Louisiana, which are ruled by Latin laws.

III. As to the contents of this treatise, this remains to be said. Since the last five precepts of the Decalogue, at least in their explicit formula, pertain to justice, our treatise will exhibit under one common rubric those things which writers are accustomed to place under various titles concerning the fifth, seventh, and tenth precepts. For concerning the sixth and ninth precepts we act in the brief Volume IV; to the eighth precept we reserve a special place after this treatise. But in the treatise itself we shall briefly propose those things which sometimes are inscribed concerning certain states of lay persons.

IV. Division. There will be three sections of this treatise: the first appointed to general notions; the second concerning the rights and offices of threefold justice; the third treating and discussing injustice and the connected obligation of restoring.

[1] Yet soon those nations endeavored to review the Code of France and to make a peculiar one for themselves. Thus in Holland, in the year 1833, its own civil Code was promulgated; the fundamental law of Belgium obliges the legislator to make new Codes, which work nevertheless, concerning civil law, has not yet been perfected. And just as Spain and Lusitania adapted the civil Code of France to their own character, so various colonies of each Nation, when they had grown into autonomous republics, began to prepare special civil Codes. Nor, after the laws have once been perfected, is labor ceased, so that, e.g., in the Mexican republic, the Code of December 13, 1870, was suppressed by the Code which began to be in force there from June 1, 1884, and to which a more recent law *de relationibus familiaribus* has partly derogated.

Section I: General Notions Concerning the Virtue of Justice

Very great utility will be in this brief section if it should happen to us to correct the less accurate but very common notion of right, and to dissipate the confusion under which several labor in distinguishing the three virtues of justice.

Definition. Justice, a special cardinal virtue, is a moral virtue by which we are inclined to render to each one his own right.

The Various Notion of Right. 1. Right in the definition is taken objectively, and it is that which belongs to another as his own, i.e. what is owed to someone according to the formal rights which he has as another person coordinated to the same ultimate end.

2. Formal or subjective right is the inviolable autonomy of a person, or of a being existing for itself, in pursuing the proper end on account of which it exists, and the inviolable relation of prevalence or quasi-dominion over things which are destined to the end or good of that person. For the need of the person demands, and the nature of things permits, that certain things be referred to the good of the person as means. These things, understood in the broad sense, are both certain substances, and actions freely to be done by a person, and the performances of others owed to this person as such. To the autonomy of the person corresponds the word I; to the destination of things toward the good of the person, the word Mine; yet we also call our members, body, and own soul mine.

3. Moreover, the nature of the person and of things demands that among these things there be active faculties [1], to be exercised toward the end of the person, which, by the same title by which the other things of each person are his own, are morally inviolable. Not a few today think that subjective right is defined by an inviolable active faculty, as if by the first essential mark; whence the common description by which subjective right is described: the morally inviolable faculty of a person of having, acting, exacting something (according to the threefold object of right). But those faculties are not always in the persons whose matters are being treated: for several persons (the impubes, moral persons) cannot direct themselves toward the end. They are then in the persons by whom they are directed, as consequences of the office by which they must direct those persons [2].

4. Right is also taken for the rule of right, or law; indeed for some whole system of laws: natural, positive, civil, canon law; an expert of law.

5. Indeed it is taken for the very place where law is pronounced: to appear in court.

[1] For my subjective faculty can indeed be an inviolable object to another.

[2] Some say that faculties are in those incapable persons but are not exercised by them. Certainly, when there is question of a physical faculty, that distinction between potency and act is well understood, nor then does the faculty reside in another. But when the faculty is wholly moral, a faculty without exercise is a faculty which is not had but which would be had if the person were capable. Besides, a moral person never exercises those faculties; and those faculties are possessed by certain physical persons. Shall we say that those faculties exist twice?

Threefold Right in Species, Threefold Justice. Besides physical persons, which are as many in number as there are rational supposits, there exist moral persons, which are constituted by physical persons conspiring into one end and reduced through that end to a certain unity. Two of this kind are perfect: the Church, which exists as an institution of positive divine law; and civil Society, which exists as a natural institution. In relation to those societies, physical persons, not as persons, but through the things which they have, are parts, while societies are the whole. But parts as such are on account of the whole; and the whole in turn is on account of the good of the parts; which is more true here, since those Societies exist on account of the perfection of physical persons.

Now, if a part is on account of the whole, that which is (by right) of the part is of the whole; and similarly, that which is of the whole is of the parts; not immediately, however, but by mediation of the right of the parts or of the whole of which they are immediately.

Therefore right can be immediate right and mediate right; and this latter is of a twofold ratio: for mediate is both that right which the whole has to those things which belong to the parts, and the right which the parts have to those things which belong to the whole.

But as many rights as there are in species, so many justices there are. Therefore there is a justice by which immediate right is rendered: this exists among persons who are, or are considered as, coordinated or equal, and is called commutative. There is also justice by which mediate right is rendered; this, however, is again divided into two species. In one species the parts render what is owed to the community as such, and it is general or legal justice; in the other, the community renders what it owes to the parts, and it is distributive justice.

Right of the Public Order or of Jurisdiction, and Right of the Private Order. The morally inviolable faculty which is found among rights, and is often taken for formal right itself, exists in one way on account of private persons, in another on account of Society. This latter ratio of right is of the public order and is called jurisdiction. Therefore jurisdiction is the public power of ruling a perfect Society, or of directing it to the common good. It is called jurisdiction because it contains the faculty of commanding the members, on account of the common good, various acts of virtues which constitute the necessary cooperation of the members toward the common good: by exercising such a faculty rights are spoken, i.e. defined.

These are the properties of all justice: 1. that it be toward another, i.e. that it satisfy a title which is in another insofar as he is a distinct person; - 2. that it do what it ought, not what it could honestly omit. For its formal honesty is that it satisfy the exigency of right; - 3. that it render the debt to equality, i.e. that it furnish as much as it owes.

On account of the first property, those things must accurately be distinguished which joined persons, e.g. father and son, owe one another insofar as they are joined, and insofar as they are persons. The former offices, in the example brought forward of father and son, will pertain to piety; the latter alone will be ruled either by justice alone or by justice concurring with piety. And in a more general way, those things which I owe to my neighbor insofar as he is another self pertain to charity; insofar as he is a distinct person, they enter the province of justice.

Division of Rights. 1. Looking to the proximate foundation, some rights are absolute, i.e. loosened in their origin from every special relation of persons, or relative, which are founded in special relations of persons [1].

Looking to the order in which they are found, rights are of the public or private order. Rights of the public order are political rights, or rights of jurisdiction, which give a share of public power; others are called civil or private rights. These again are common rights of the person and citizen in Church and State, public rights; or family rights, which distinguish persons in the family; finally patrimonial rights.

Patrimony is a being of reason by which is designated the sum of rights and obligations which can be estimated by price and consequently have economic value. These are either rights in a thing, which give immediate power over some thing, or rights of credit, which affect the obligation of another, or rights of doing something; e.g. of accepting an inheritance, a donation, of making a will.

A correlative obligation of credit can be something of doing (furnishing work), omitting (not building, not planting), or paying some thing, i.e. of bringing it about that the dominion of some thing be transferred to the creditor. The creditor is then said to have a right to a thing.

Concerning these things cf. Colin and Capitant, I, p. 101-106; Pacifici-Mazzoni, II, n. 1-6. Therefore it is seen that the division of right into right in a thing and right to a thing, even if you attend to merely patrimonial rights, is by no means adequate, although it is very useful. Compared among themselves, right in a thing has an immediate termination in things; right to a thing has an immediate termination to another's action by which the thing becomes mine. By right in a thing I preserve what is already mine; by right to a thing, I exact from another that it become mine, and consequently I acquire. Wherefore right to a thing is called personal right or credit. What is mine is always now determinate in body and can be shown in the individual; what is owed to me can be a thing determined only by genus, e.g. 100 kilograms of wheat, 5000 lire. He who has right in a thing, of itself excludes all others, competes with no one, vindicates the thing everywhere as his own, by an action which is called *in rem*; he who has right to a thing can exact it by a merely personal action from him who owes, nor is he who is prior creditor necessarily preferred to those posterior.

3. Looking to the perfection of dominion, some are alienable, others inalienable. Alienation causes the right to pass to another or to be extinguished; and it must especially be distinguished from non-use of right, or from non-opposition of right. He who has a right can always validly effect by his consent that the note of injustice against himself be removed from another's act, even an illicit one, so that this always holds: "No injury is done to one consenting." But if the right is inalienable, that consent is always validly revoked, so that the note of injury is restored.

[1] Rather than, with Colin and Capitant, from the persons by whom they are circumscribed, we prefer to divide rights from their proximate foundation. For there is also an office incumbent upon all of not impeding the exercise of rights which from contract oblige Titius to furnish various things; and we would have to distinguish a third, mixed genus. For the family rights of father, husband, and tutor must be observed by all, and at the same time induce special relations between parents and children, between husband and wife, between tutor and ward.

Summary

I. Justice, a special cardinal virtue, is a moral virtue by which we are bent to render to each one his own right. In that definition right is taken objectively, or signifies what is owed to another on account of some formal right of his.

II. Formal or subjective right is the inviolable autonomy of the person in the pursuit of his end, and the inviolable relation of prevalence or dominion over things which are ordered to the good of that person. Those things can be substances (which man calls his own), actions freely to be done by a person, and performances of others; and also active faculties to be exercised toward the end of the person. Hence, by the more common but less accurate description of right, subjective right is called the morally inviolable faculty of a person of having, acting, exacting.

Under the name of objective right there also comes the rule of right or law; indeed the whole system or complex of laws: natural law, civil law, an expert of law; and the very place where law is pronounced: to appear in court.

III. In the present order, physical persons, or rational supposits of this world, actually pertain, or ought or can pertain, as parts to two perfect societies (moral persons): the Church and some civil society. But parts, as such, are on account of the whole, while in this case personal dignity is preserved; and the whole in turn is on account of the parts. Hence those things which are of the part are also of the whole, and that by reason of the parts; and those things which are of the whole are also of the parts, by reason of the whole. That is, the parts are on account of the whole with the rights which they have, and similarly the whole is on account of the parts with the rights which it possesses. Therefore those things which immediately are of the parts or of the whole are mediately (because they are of the parts or of the whole) of the whole or of the parts.

Thus it happens that right can be immediate and mediate; but mediate right is of a twofold ratio: the right which the whole has to those things which are of the parts, and the right which the parts have to those things which are of the whole.

But as many rights as there are, so many justices there are. Therefore there is justice which renders immediate right, among persons who are, or are considered as, coordinated or equal: it is called commutative; there is justice which renders the mediate right of the community: general or legal justice; and justice which, residing in the community, renders the mediate right of the parts: distributive justice.

IV. What is owed to the community as such is exacted by a right (taken for an active faculty) of the public order, which is called jurisdiction. This is the public power of ruling society or directing it to the common good.

V. All justice is toward another: satisfying a title which is in another as he is a distinct person; it does what it ought, satisfying the exigency of right, so that all its acts are properly necessary; it equals the debt: as much as it owes it furnishes, neither more nor less.

VI. **Division of rights.** 1. Looking to their proximate foundation, some rights are relative, others absolute, according as they are, or are not, founded in a special relation of persons.

2. Looking to the order in which they are found, they are of the public order: political or jurisdictional; or of the private order: private or civil rights, whether they define the common condition of citizens in Church or State, as public rights; or their proper condition in the family: family rights; or affect their proper economic condition: patrimonial rights. The complex of rights and obligations of that order is called patrimony.

Patrimonial rights are either rights in a thing, which confer immediate power over some thing; or rights of doing, and rights of credit: these oblige another to do or omit something, or to transfer the dominion of some thing, in which case the creditor is said to have right to a thing. Right in a thing is protected by action *in rem*; right to a thing, by action *in personam* (a condiction) against the debtor, and can be removed by a more powerful right of another, e.g. in the thing itself.

3. Looking to the perfection of dominion, some rights are alienable, others inalienable. Alienation, which transfers a right, must especially be distinguished from mere non-use or non-opposition of right, which gives place to the proverb: "No injury is done to one consenting."

Section II: Offices of the Threefold Virtue of Justice

Title I: Offices of Legal and Distributive Justice

Utility. The few things which we hand down here explain more the notions of legal and distributive justice; and at the same time they touch the grave question concerning the force and obligation of laws, especially civil laws.

Chapter I: Offices of Legal Justice

Definition. Legal justice, which is rendered to society as such, makes citizens inclined to do those acts which, either by common necessity or from the use of jurisdiction, are owed on account of the common good. - Those acts are formally honest; for indifferent acts, as such, do not conduce to the common good. They are, however, acts of various virtues. And hence legal justice is called general, because it does not have special matter to which, as chastity or charity does, it gives first honesty; but it exercises acts which are already honest from elsewhere, or even commanded, as owed on account of the common good.

The citizens, in whom the virtue exists as in its subject, are some princes, or those exercising public power, others subjects. Princes, as such, legal justice disposes to making good laws, whence it is said to exist in them architectonically, or to administering the republic well. Subjects, as such, it disposes to observing just laws well. Hence, since most acts of legal justice are commanded by law, it borrows the name of legal justice. Hence at the same time it is clear why, according to the various matter which is commanded, an act commanded by jurisdiction pertains to various virtues, so that the faithful man who observes the ecclesiastical fast cultivates temperance, and the Catholic who performs servile work on Sunday sins against religion. But to establish good laws, to administer well the republic or the Church is for rulers an office of commutative justice.

To piety or to other virtues belong the various good acts which citizens freely do with regard to the common good. This escapes not a few writers today, who confusedly ascribe those honest acts to legal justice.

You Ask Concerning the Force of Positive Law. Both canonical and civil human positive law can efficaciously dispose many things concerning the actions and things of subjects, on account of the common good. Many things also are not so terminated by divine law, natural or positive, that they can suffice for the mutual relations of men; but they must rather be further defined and accommodated to the present utilities of society: the matrimonial regime, inheritances, wills.

Positive law can, for the protection of weaker persons, make the same incapable of firm obligation; make certain agreements null with regard to the common good; impose certain solemnities to be observed in graver juridical acts, in order to forestall abuses and doubts; on account of the common good, create and extinguish rights; add new things to the conditions of agreements. By these various decrees, the human legislator can bind conscience. Now it is asked how far he has willed to bind it.

First of all the words of the law must be attended to, if they are clear; and one must answer for an obligation of conscience if they formally address conscience, or if, from a reasonable interpretation of the law, to which legislators are judged to have accommodated their mind, an obligation of conscience is gathered. This interpretation can vary with time and circumstances. Here also the force of some custom accedes.

Today, above all, a distinction must be made between ecclesiastical and civil laws. Ecclesiastical laws, as we observed in I, 253, of themselves oblige conscience, so that the presumption is for obligation. But the contrary must be said in our civil laws.

For today, in our civil laws, it seems one must answer rather for the least obligation of conscience: the common good itself suggests this, so that citizens may be in a more equal place before the law; and the profession of religious indifference on the part of many legislators demonstrates that such was the mind of the legislator. There also accedes the more vigilant and strong action today of the external forum, which brings it about that the legislator can more easily be content with external coercion.

Accordingly not a few writers, with whom we agree, establish this rule. In matter of justice, civil laws oblige conscience as much as is sufficient that public order and common peace be provided for. Wherefore they will oblige conscience: a) just laws after the definition of the judge by which a thing is adjudged to someone; b) before the sentence of the judge, laws which complete the silent natural law by their definitions. - But if the case can be solved by natural law, and there is a conflict between a natural title (say occupation) and a civil title, the thing seems able, up to the sentence of the judge, to be preserved by the natural title [1]. And this double criterion can be proposed: laws which immediately define real rights oblige conscience, at least when the definition is necessary; but after the sentence of the judge, laws which immediately prescribe certain acts to citizens. Cf. Van Gestel, *De iustitia et lege*, pp. 141, 203, 224, 225.

So long, however, as the matter concerns private patrimonial relations, not even the reason of the common good, or affection toward the fatherland, stirs citizens to execute those laws beyond what conscience commands.

Concerning the obligation of laws which impose taxes, we shall act below, where we treat of injustice.

[1] This formula, however, is rather our own. Often, from the principle which they have in common with us, they gather that in all laws which immediately and honestly define real rights there is of itself a force of binding conscience, while laws which impose an obligation hold conscience less immediately. But others, according to the testimony of R. P. Cornelisse himself, II, 10, 3°, restrict this force more to necessary things.

Summary

Legal justice commands various acts of virtues on account of the common good. But because those acts are already honest from elsewhere according to themselves, and pertain to all virtues (at least moral virtues), it is a general virtue, lacking special matter and commanding in the matter of all virtues. It is called legal because, except for manifest necessity of the common good, law defines its act.

Princes, as such, legal justice disposes to fulfilling their own office of commutative justice, that of making good laws, administering the republic well. Wherefore in them it is said to exist architectonically.

How far human law, which can directly oblige conscience, has willed to oblige it in matter of justice: this we can learn first of all by the common interpretation of the law. Today, however, according to approved authors, civil laws directly oblige conscience only so much as is sufficient that public order and common peace be provided for. Therefore just laws oblige conscience after the sentence of the judge by which a thing is adjudged to someone, lest there be a perpetual conflict between the external forum and the forum of conscience; and also before sentence, laws which supply the silent natural law, lest rights and goods remain in uncertainty.

Chapter II: Offices of Distributive Justice

Distributive justice, in an equal proportion, which varies according to the nature of the things and of Society itself, as far as the common good allows it, directly distributes common goods, and indirectly common burdens, among citizens. Through it, in this way, Society renders to its members what is owed to them as such.

1. We say that the proportion must be observed as far as the common good allows this, because the things of which there is question are destined first of all to the community, and therefore can reach private persons only with that destination preserved. Therefore distributive justice is in a certain way subordinated to legal justice, so that citizens must not rarely tolerate the very inequality which the common good has demanded.
2. Moreover, since only goods are of themselves desirable, through the distribution of goods alone does Society directly render to its members what it owes them. Yet indirectly it is advantageous not to be too much burdened; and so the equal distribution of burdens itself is commanded by distributive justice.

Indeed, since public power can deprive citizens of their goods only on account of the common good, an inequitable distribution of burdens would offend commutative justice itself.

We have said that material rules vary according to the various society. For in a society of autocratic government, it can happen that all public functions are judged to be in the possession of the monarch, who therefore can legitimately exercise them through suitable persons, but persons acceptable to himself; in an aristocratic society, the ratio of equal distribution will have to be accommodated to privileges. But in our societies, citizens are equal by right, and public offices must be placed among common goods. Therefore these will have to be distributed, not according to the political parties to which citizens belong, but according to the title which exists in them.

The title itself will vary according to the nature of the goods. Hence: a) if goods, such as public offices, even after they have been assigned to one person, retain a principal relation to the common good, they will always have to be conferred first of all with regard to the republic. Therefore all those things must be observed in candidates for offices which permit one to hope for a better procuration of the office, and, other things being equal, account will have to be taken of merits, because offices also possess some ratio of reward; b) if, concerning certain utilities deservedly hoped for from the community, all citizens are pressed by the same necessity in species, even if perhaps not in the same degree, e.g. if there is question of protecting quiet possession of rights and goods, this will have to be furnished equally to all according to the quantity of goods and rights which are exposed to danger, unless nevertheless the particular necessity of certain persons imposes greater solicitude; c) the means by which excessive misery is repelled will have to be procured more for the indigent; and the means by which the arts and science are promoted will have to be procured more for the deserving.

Summary

Distributive justice, in an equable proportion, directly distributes common goods, indirectly common burdens, among citizens.

Because it distributes common goods, which by their first destination ought to serve the community, that equality must be observed as far as the common good allows it. Among those goods today public offices also must be counted, which therefore must be conferred, not according to the parties to which citizens belong, but, with the common good preserved, according to the title which exists in the citizens.

Title II: Offices of Commutative Justice

Order of speaking. Since these offices look to this, that each one's own right be rendered to him, their explanation is contained and completed by the explanation of rights. The order of speaking will be this: that we treat successively of the rights which are to be distinguished; - of the subject of rights; - of the object of rights; - of the modes of acquiring rights, in general; - of original modes; - of derived modes of acquiring rights through contract, through an office entrusted or admitted; through inheritance and testament; through another's delict or quasi-delict.

Utility. From this title the theologian ought especially to gather this fruit, that he sufficiently know various juridical acts and titles, at least for understanding the cases which are proposed, I do not say for solving them without the assistance of an expert in law; and that at the same time, once a solution of the external forum has been obtained, he may know how far that solution is efficacious in conscience, and may be able rightly to estimate the connected moral obligations.

Chapter I: On the Various Dominion and Possession of Right

Article I: On Various Dominion

All rights, as the very ratio of right demonstrates, when the object is considered, imply some dominion, more or less perfect; and from the dominion of jurisdiction, of which we treated above, there is distinguished the dominion of property, which immediately, although not exclusively, exists and is exercised on account of the utility of the one having it. This alone we consider in this title. Again, with the subject considered, there can be singular dominion, or dominion of one person, or condominium of several.

I. - On Perfect and Imperfect Dominion

Division From the Amplitude of Right. Full or perfect dominion is the right of disposing for one's own advantage concerning the substance and utility of a thing. To this is opposed imperfect dominion, which, in Roman law and in several laws derived from it, is distinguished into direct, naked, or also radical dominion, and into useful or indirect dominion. The former excludes the right of perceiving utility and is called direct, because it immediately affects the substance; naked, because it is a title without use and fruit; radical, because it regards the source or root of utilities and fruits. The other embraces utility alone, and is called useful, because it gives the advantages of dominion; indirect, because only by reason of the fruits or utility does it subordinate the fund itself to the owner of the utility. Useful dominion can exist more or less broadly; and thus, when there is question of external things, there exist various rights which are called by various names and are, as it were, drawn off or dismembered from perfect dominion.

In Latin and Germanic law there are numbered, as rights which subsist through themselves, usufruct, use, habitation, servitude, superficies, emphyteusis; as rights which suppose a principal obligation and accede to it: pledge, antichresis, privilege, hypothec.

American and English law by no means ignores many ratios by which fruits or utilities can be separated from the dominion of a thing; but it is not accustomed to use proper names of rights subsisting in a thing (or principal rights).

In English law imperfect dominion is designated by the generic word *entail*; and it is already judged imperfect on account of a merely nominal dependence on the republic, in which every private proprietor of an immovable thing is judged to be placed. But a multiple *estate* in immovable things is distinguished (*in things real*): *in fee simple*, when the right passes from the one having it to all heirs in perpetuity; *in fee tail*, when the right passes from the one having it to natural descending heirs in perpetuity; *for life*, when it is bounded by the life either of the owner, or of another, or even of several; *for years*, when it exists for a determinate epoch (for a month or for a thousand years); *at will*, when it can be ended at the discretion of the landlord (lessor) or tenant (occupier); *estate on sufferance*, when, after the end of the right, the occupier continues, as it were from the tolerance of the owner, to use or enjoy the field. The three former are called *freehold estates*, when their possessor must furnish nothing unworthy of a free citizen; the others are called *less than freehold*.

Often, however, the word *estate* designates property in the full sense; and practically *freehold estates* do not differ from property.

There is distinguished, moreover, *real property*, which is in immovable things (*things real* or *realty*) conceded for a non-defined time, i.e. in perpetuity or, for example, for life; and *personal property*, which affects movable things (*things personal*) or even immovable things but conceded for a defined time. *Things real* are all immovable things and connected rights: as the right of rent from fields, the right of having a road through another's field; even the dignity of "peer" (*peerage*), the office of judge.

I. Perfect dominion is the full right of property. Wherefore it permits the owner, with justice alone considered: a) use at will, even that use which accidentally harms one's neighbor, provided that the use is not prohibited by law; b) exclusion of others; c) disposition of the thing. That is, that right is the right of using and abusing exclusively (by which word the faculty of disposing or changing the substance is juridically designated).

Nevertheless this dominion is subject to the high dominion or jurisdiction of perfect society. This, with regard to the common good, can order and moderate the exercise of the right of property: indeed, can deprive a subject of his things, provided: a) that this be done as much as the necessity of promoting the common good requires; b) that the equality of justice be observed, and therefore that the damage inflicted on the subject be compensated from common goods. For, as we have said, that justice, in distributing burdens, easily becomes commutative.

Therefore a law cannot be approved which assigns to a citizen from whom it takes dominion only a ratable part of the value; while, on the contrary, a progress of justice must be acknowledged in the effort by which, after the immense war, they endeavored to distribute among all citizens the peculiar damages inflicted on certain persons on occasion of the war.

II. 1. Usufruct is the right of using and enjoying the things of another, with their substance preserved.

2. The usufructuary can make all fruits his own. Moreover, a fruit is "whatever is accustomed to be born and reborn from a thing." Fruits are some natural, others civil. In a somewhat broader use, under this name there also comes what is regularly extracted from coal-bearing veins, etc.

Natural fruits are truly produced from the thing: either by nature alone, and then they are called simply natural; or with the industry of men joined, and then they are industrial, or rather mixed. For that is properly called industrial which is owed wholly to industry.

Civil fruits do not arise from the body itself of the thing, but consist especially in money which, from a contract concerning the thing, must be paid constantly after individual intervals: say, the annual price of a leased house [2].

3. Natural fruits are acquired by perception or separation (these, in the case, are not distinguished); civil fruits are judged to be acquired from day to day, so that, if the usufruct should have an end in the middle of the year, the rent belongs for one half to the owner and to the usufructuary.

Fruits pending at the beginning and at the end of usufruct, say crops mature but not yet cut, by mutual turn belong to the usufructuary and to the owner.

What is understood under the name of fruit can be defined differently in different law. A "treasure," however, is not customarily placed among fruits.

These things can be said generally. Yet various laws must be consulted. Thus English and U.S.A. law abstains from the name usufruct, although it does not ignore the thing, "right to the 'fructus' from property belonging to another." The Code of Germany, on the contrary, treats of usufruct at length, arts. 1030-1089, distinguishing the usufruct of things, of rights, of patrimony.

Must the usufructuary at the beginning of the right compensate expenses made for the fruits which he will collect; can he at the end exact compensation of the expenses of fruits which he does not acquire? Austrian, Canadian Q., and Spanish law concedes expenses of cultivation, while by the law of Latin America, Belgium, France, Holland, Germany, nothing must be paid to him: which, as not very equitable, is also censured by jurists, e.g. by Colin and Capitant, *Cours de droit civil francais*, I, p. 803.

4. Usufruct of itself cannot be constituted except in things which are not consumed by first use. Nevertheless in other things, say in oil, wine, a quasi-usufruct, or usufruct said more broadly, is admitted. - When it is ended, what must be restored is defined by the Italian Code (art. 483) somewhat otherwise than by the French Code. If things are consumed not by first but by slow use (say garments, furniture), it suffices that the thing be returned in the state in which, without deceit or fault of the usufructuary, they are found when the usufruct is ended (art. 484 Cod. it.).

For more, cf. the civil laws.

[1] Thus C. Gall., art. 578.

[2] The Code of Germany, omitting these distinctions, rather distinguishes (art. 99) fruits of a thing and fruits of a right; fruits which arise from a thing or right according to its destination, and fruits which must be attributed to some juridical relation.

III. Use and habitation. By Roman law, by canon law (before the Code), and by certain laws today, as the Austrian (arts. 504-508, 521), Belgian, French (arts. 625-635), German (arts. 1000-1003), Italian (arts. 476, 521-530), and that of the Argentine republic (art. 2537), there is designated by the name of use and habitation the real right of inhabiting another's house or of perceiving from another's field a utility circumscribed by the proper necessity and that of the family of the one using or inhabiting. - They can also, with usufruct, be designated by the general name of personal servitudes.

IV. A servitude is a certain real burden inhering in an immovable thing in favor either of another fund or of a definite person. - This is passive servitude, while the right born from it is active servitude.

Division. 1. A personal servitude is that which is constituted for the utility of a definite person; and certain of these, in several laws, we have just seen to be designated by a proper name (usufruct, etc.). A real servitude, or servitude of estates, exists for the utility of an immovable thing. Thus, besides the personal servitude of use, various uses of an immovable thing can be constituted for the utility of another fund (or of its proprietor), and this by law or agreement. Individual uses of this sort will be a certain ratio of real servitude. In a real servitude there is distinguished the servient fund, on which

the burden is imposed, and the dominant fund: it is a kind of quality of this latter which cannot exist separately.

3. Real servitude is called urban or rustic, according as it is constituted for the utility of an urban estate, i.e. a building, or does not inhere in buildings. This division is absent from the Italian Code.

It is continuous or non-continuous, according as it has a perpetual cause: servitude of prospect, of aqueduct; or, because it must be exercised by human action, it serves at intervals: servitude of a path.

It is apparent or non-apparent, according as it is manifested by an external sign or not.

It is affirmative, which gives an active right of doing something, e.g. of passing through another's estate; negative, which merely prohibits, e.g. lest another build higher. Observe that a servitude cannot consist in doing, i.e. a servitude obliges no one to a positive act, but merely to tolerating or not doing.

The distinctions made must be attended to in the modes of acquiring, exercising, and extinguishing servitudes.

Legal servitudes are imposed by the law itself so that the right of property, especially among neighbors, may be prudently ordered.

V. In certain laws there is acknowledged, as a distinct right in the thing of another, superficies, by which someone has dominion either of all things (complete superficies), or at least of certain things (incomplete superficies), which are built or planted on another's fund.

In Belgium the right is ruled by the special law of January 10, 1821, which circumscribes the right by fifty years. Concerning that special right the Codes of the Argentine republic, France, and Italy are silent, although the French Code, arts. 552, 553, 661, and Italian Code, arts. 140, 448, 562, do not omit to treat of the dominion of things which exist below the soil or on the surface. That right then gives place to various doubts and controversies, concerning which jurists must be approached. - Concerning superficies the Code of Germany treats in arts. 1012-1027.

VI. Emphyteusis is a right in another's thing, by which someone can fully enjoy that thing, under this law, that he pay something (money or other species) to the owner annually, at least in acknowledgment of dominion. What must be paid is called the canon.

In Italian law, art. 1556, the obligation of improving the fund is placed in the description of emphyteusis, although, with the exception of a few dispositions, arts. 1562, 1563, 1564, full liberty of agreeing concerning mutual rights is conceded. In German law, under the name *Erbpacht*, as a right of certain States, it is named and admitted by art. 63 of the introductory law of the Code. Certain laws, like the Code of Holland and of Italy, admit that it be constituted in perpetuity; but the law of Italy makes that perpetual right essentially redeemable, once the capital which corresponds to the canon has been paid. In Belgium, by force of the law of January 10, 1824, its minimum time is 27 years, its maximum 99 years. Nor do the laws of the U.S.A. permit a perpetual lease of land; but they define the maximum time in various ways.

The Austrian Code, arts. 1122 ff., distinguishes hereditary lease-hire, for a just price; emphyteusis, for which a canon, far below a just price, is paid; and ground-rent, which is paid by him who enjoys

by hereditary title the surface to the owner of the fund who at the same time enjoys those things which are below the soil. Concerning that right several Codes, e.g. that of France, are silent, but the law of June 25, 1902 acknowledges emphyteusis as a right in a thing, and assigns to it a minimum time of 18 years and a maximum of 99 years.

A fief, insofar as it still exists in England and Germany, designates a real, perpetual, and hereditary right in another's fruitful thing, with the added obligation of the feudatary (or vassal) of exhibiting homage and fidelity to the direct lord. By art. 59 of the introductory law of the Code of Germany, the laws of the States concerning fiefs are confirmed.

VII. On accessory rights. 1. General matters. Certain rights exist merely for strengthening the execution of a principal obligation, so that with this they fall: "the accessory follows the principal."

Every debtor obligates his patrimony, i.e. the universality of movable or immovable things of which it consists or will consist. But this obligation impedes no alienation, confers no right in a thing, and offers the same advantage to all creditors.

Nor must special things be said concerning the faculty which the law sometimes concedes of retaining certain things of another until he has satisfied certain debts connected with that thing.

But certain things must be indicated concerning pledge and antichresis, privilege (of exacting), and hypothec.

2. On pledge and hypothec. Pledge designates both the special right which falls to the creditor in the thing pledged, and the very object of that right, and the contract by which it is constituted. But the special right looks to this, that the creditor obtain possession of the thing, which the Code of Germany calls indirect, and then, either by sale or by acquisition of the thing, satisfy himself before other creditors.

By pledge properly so called, the thing is handed over to be possessed by the creditor formally or equivalently. Wherefore, of itself it is not constituted except in movable things and in titles (bearer titles) which represent rights.

Thus it differs from hypothec, by which name we understand the right in another's immovable thing, by which this thing, for the thing principally owed, is specially obligated to the creditor, so that he may be satisfied before others from the price of the thing. Even when the possessor has been changed, the obligated thing remains.

Moreover, a threefold hypothec is distinguished, according to its proximate source, which is law in legal hypothec, decree of the judge in judicial hypothec, agreement in conventional hypothec. Nevertheless, not all laws admit judicial hypothec as formally such.

Concerning conventional hypothec these things especially must be observed: the agreement or constitution, which for the most part must be made by an authentic act or before a notary; publicity, by which care is taken that what is inscribed in the registers can be known by all whom it concerns; the time through which it is preserved: for unless after a defined number of years it is renewed, the inscription is deleted by office, and the creditor at least loses his order; the order of hypothecs, since an immovable thing can be pledged to several creditors. But he who comes first in order, or who is said to have the first hypothec, obtains what is of interest before the others; he who has the second

precedes the third, and so on. Finally, in several laws a conventional hypothec must be special, insofar as the obligated goods and the obligations to whose protection they are deputed are accurately defined.

But just as the constitution of a pledge can be so conceived that the dominion itself of the thing is transferred to the creditor until he has obtained payment of the principal debt, so again nothing is opposed to this, that a thing, even movable, without delivery, be affected for the security of some obligation. This can be done, for example, of a credit inscribed in the Code of Debts of the State (*grand Livre de la dette publique*). And most laws today acknowledge various forms of security of this sort: then, however, they are accustomed to require the solemnity of some inscription in public registers, so that without prejudice to third parties the right can be exercised. Pledge understood in this way scarcely differs from hypothec otherwise than by its object, which is movable.

From common pledge there is also customarily distinguished pledge in a commercial thing, which is constituted with lesser solemnity (e.g. by delivery alone without accompanying writing), and confers a more expeditious right of obtaining payment.

Of itself, the creditor is prohibited from using and enjoying the thing pledged. Nevertheless the contrary can be expressly or tacitly agreed upon, so that the creditor can perceive the utility and fruits first to compensate expenses and interest, then to extinguish the principal debt.

The laws which define the mode by which the creditor can sell or acquire for himself the pledge, and which prohibit certain clauses, endeavor to protect the debtor from abuses, especially those of "usurers."

N. B. Today not only on account of debt or defined obligations of private persons are pledges made and hypothecs conceded, but also several officials, public or private, who have great sums of money to administer, must give security concerning matters which can be imputed to them. This for the most part is done by depositing "titles" in a bank or by a similar pledge; sometimes also by a constituted hypothec, which is called a credit hypothec.

Various Civil Laws Concerning These Rights. 1. Latin law. By Italian law (arts. 1878-1890), French and Belgian law (arts. 2071-2084), Austrian law (arts. 451, 1368), Swiss law (art. 884 c. civ.), Dutch law (art. 1198), pledge cannot be constituted by words alone, but delivery of the thing is necessary; pledge gives the creditor a privilege by force of which, through the sentence of the judge, he either acquires the thing, once he has paid what its value exceeds beyond the debt, or obtains payment before others from the price of sale at auction [1].

In Italian law, immovable goods, the usufruct of them, emphyteutic rights, titles of obligations of the State can be affected by hypothec (art. 1967). Everywhere today it is required that the hypothec be publicly evident. Wherefore, by Italian, Belgian, and French law it must be inscribed before the official whose name is "keeper of hypothecs." And after a certain time (before 30 years have elapsed in Italy, before 15 years in Belgium, before 10 years in France) it must be renewed.

Among several creditors who have the right of hypothec, those inscribed earlier are preferred to others. In Italian law (art. 2008), provision is made that those who present the document at the same time be placed under one number of inscription. But in Belgian and French law, they are estimated from the day of inscription, so that those who have obtained inscription on the same day are equal in

time. In Canadian Q. and Dutch law they receive their order from inscription; except, in Canadian law, the hypothec by which provision is made for premiums which are owed to mutual societies of insurance against fire. The hypothec must be constituted through an authentic instrument (before a notary), and the conventional hypothec is subject to the law of "speciality," i.e. both the credit to which it gives security, and the goods which give security, must be defined individually. The possessor of the burdened fund can alienate it, but cannot make the thing worse to the prejudice of the creditors. To these belongs the right of "following" (*droit de suite*) the thing affected by hypothec, unless the new owner wishes, by making payment of the debt, to free it from the burden.

Spanish, Lusitanian, and Latin-American law is similar; in the law of the Argentine republic, however, attention must be given to the special law (n. 9661) which instituted agrarian pledge (*prenda agraria*) in machines and instruments of agriculture, in animals and movables assigned to the cultivation of fields, and also in the fruits of mines. The debtor becomes, as it were, the depositary of the thing pledged in the name of the creditor. That contract can be constituted by authentic or even private writing, but unless it is inscribed in public registers, it has no effects with respect to third parties.

By the Austrian Code pledge is used as a generic word, and pledge of a movable thing (pledge of French law) and pledge of an immovable thing or hypothec are distinguished.

2. Germanic law (arts. 1205-1257) differs scarcely from Latin law concerning pledge and antichresis, except that art. 232 enumerates various modes of giving security; because, in antichresis (*Nutzungspfand*) no distinction is made of movable and immovable thing. Concerning hypothec, however, these things come to be noted. First, without any relation to some principal debt, an immovable thing can be burdened with the obligation of paying, either once or also, in the manner of rent, periodically, some sum; and indeed in such a way that the written title by which the right is acknowledged belongs to the bearer: thus a predial debt or predial rent is constituted. Cf. arts. 1191-1198 and 1199-1203. That debt has been called abstract hypothec.

But, this omitted, the Code distinguishes *Buchhypothek*, which is our ordinary hypothec; *Briefhypothek*, or a hypothec which is not only inscribed in public registers (the registry), but besides must be proved by a certain written instrument, by the cession of which the right itself is yielded or transferred; finally *Sicherungshypothek*, by which someone makes secure in advance a credit perhaps future (arts. 1181-1190). Therefore a hypothec can be constituted in this way, so that the very sum whose payment it renders secure is not yet defined, but only the maximum beyond which the fund cannot be obligated is defined (art. 1190).

3. In English and U.S.A. law, *pawn* or *pledge*, *lien*, *mortgage* must be distinguished. *Pledge*, or pledge, is a contract by which a thing subject to personal dominion (*personal property*) is handed over to another for the security of an obligation. - *Lien* gives neither dominion nor possession to the creditor, but binds the thing, especially an immovable thing, to the security of the creditor's right. - *Mortgage*, by force of common law, transfers to the creditor himself the dominion of the thing or right until satisfaction has been made to the creditor. It can be constituted in *personal* or *real estate* (*property*). Constituted in *personal estate* it is called *chattel mortgage*. Delivery of the thing is not necessary. In most federated States of America, *mortgage*

has been reduced by equity to a simple *lien*. *Lien* in an immovable thing comes very near to our hypothec.

In England, from the year 1879 there is a special law concerning *Pawnbrokers* (usurers) which rules loans which do not exceed ten pounds.

[1] In Italian law, akin to pledge is compulsory distraint (*pignoramento*) by which, at the request of the creditor, the movable thing and also the harvest of a debtor in mora are sold by public authority for extinguishing debts. But distraint confers on no creditor a privilege by which he is preferred to others. In French this is called *saisie*, and distraint of a harvest is called *saisie-brandon*.

3. On antichresis. By the name antichresis is designated a pledge whose fruits can be perceived by the creditor. Repudiated by the Austrian Code (art. 1372), which admits only the concession of use (arts. 459 and 1372), it is admitted by the German Code (art. 1213).

As pledge of an immovable thing, antichresis exists in the law of Italy (arts. 1891-1897), France, and Belgium (arts. 2071, 2085-2091), by which the creditor indeed acquires no privilege in the thing itself, but has the right of perceiving fruits, to be imputed first to interest, then to capital.

4. Privilege is a favor of law, founded in the very quality of the credit, by force of which the goods of the debtor, either all or at least certain ones, must serve for extinguishing certain debts (privileged debts) before others, even those which are protected by hypothec.

Therefore it can be general or special. Thus, in Italy, by general privilege in movable things are protected judicial expenses which redound to the common utility of creditors, funeral expenses; expenses for caring for health during the last six months of life; food, and certain fiscal credits. But a special privilege assigns the things which a traveler has brought into an inn for paying expenses made there. Cf. Cod. ital. arts. 1955-1963.

Privilege is constituted by law alone; nor is it estimated by time but by cause: whence, among the privileged, he to whom the law gives greater favor is preferred to the others; and those to whom the law gives equal favor concur equally.

Privileges of this sort occur in every law.

N. B. Except for perfect dominion, which is confused with the thing itself, all rights in a thing, just as they are a certain dismemberment of the right of property, so also are a certain servitude of one's own thing. This servitude is sometimes called by a proper name, use, usufruct, etc.; sometimes by the common name of servitude. Wherefore any right in a thing, if it lacks a proper name, can be called a servitude. Nor do all laws employ the same proper names in number.

II. - On Condominium

Notions and Principle. With the number of those having the right considered, there is distinguished separated or singular dominion, i.e. of one physical or moral person [1], and the condominium of several over an undivided thing. The common dominion of several, if it has profit or utility as an end commonly intended, pertains to society, concerning which we shall treat below under contracts; with that common intention excluded, there is mere undivided possession.

Then, with the diverse disposition of laws or agreements preserved, individuals can alone exercise juridical acts concerning their own aliquot part; but every act by which the material state of the thing is changed requires the consent of all. Since the regime of condominium is sufficiently impeded, modern laws favor it little.

Wherefore a right is generally acknowledged to individuals of petitioning for division, yet at an opportune hour or without damage to others, and with a contrary obligation induced by agreement preserved. This, however, by Latin law cannot bind the parties in perpetuity, but by one agreement can be established not beyond 5 years by the Code of France (art. 815); not beyond 10 by the civil Code of Switzerland (616-651), of Italy (673-684); not beyond life by the Code of Austria (831, 832). By one agreement, I say: for when the time has elapsed it can be renewed. (The numbers thus appended to laws are articles of the Codes.)

In Italian law the consent of all is not required for establishing various things concerning a common thing, but the assent of those who possess the greatest part of the common thing suffices.

For a grave cause, the judge can, notwithstanding an agreement, permit division.

The Code of Germany does not reject an agreement of perpetual community, but permits it to be rescinded for a grave cause.

Those things which we have said thus far must not be applied to certain accessory communities, such as walls common between two buildings or gardens, or those which flow from the nature of the thing, as if a house is sold and possessed through various stories. Perpetual common possession of a family tomb, of the family archive, is admitted also in France. Cf. concerning Italian law Pacifici-Mazzoni, III, p. 499 ff.; concerning French law Colin and Capitant, I, p. 770 ff.

[1] For a moral person is only one subject of right. Indeed, by ancient Germanic law, several who together possessed an undivided good were not judged singular possessors of an aliquot undivided part, but all were thought to have the whole thing, as it were, after the manner of one. Cf. Duynstee, C. SS. R., *Burgerlijk recht en zielzorg*, n. 588.

Article II: On Possession

Possession. A power existing in fact over a thing can accede to right, or right and fact are separated. Joined with right, possession gives to the one having the right all the advantages and privileges of a possessor. And even separated, according to itself, it binds a certain bond between the thing or right and the possessor, by force of which the possessor, as such, by the very law of nature is preferred to all who do not prove their right, and is sometimes also protected by several privileges of positive law.

Lest a more accurate exposition of a laborious question become too involved for the end of the present treatise, we shall use the customary definition, which nevertheless we shall temper or correct by a declaration of the words, reserving a somewhat fuller explanation for the smaller text. Therefore:

1. What possession is. Possession, which, as we all confusedly feel, is the connatural consequence of right, or a fact which regularly coheres with right, is still more commonly defined: detention of a thing with the mind of an owner.

In this definition, detention, which of itself would signify only the effect of corporeal apprehension, impossible in immovable things, must be taken much more broadly and even improperly; for it

designates the relation of a thing to a person existing in fact, such as is required for freely taking the utility of the thing; or more briefly, a true apprehension or one equated in moral estimation. - Under the name of thing, they are also accustomed in some way to understand rights, yet in various ways. For some, considering that things alone can properly be possessed, in order to excuse the metaphorical use, add quasi-usufruct and quasi-possession of rights to the usufruct and possession of things; the Codes of France (art. 2228) and Italy (art. 685) equally admit possession of things and of rights, in these words: "*Il possesso e la detenzione di una cosa o il godimento di un diritto che uno ha o per se stesso, o per mezzo di un altro, il quale detenga la cosa o eserciti il diritto in nome di lui*"; better, in our opinion, and more consequently to the received division of dominion into direct and indirect, the Code of Germany (cf. arts. 854 and 868) acknowledges direct possession of the thing to the owner (true or supposed), but indirect possession to him who, on account of a right in another's thing or on account of a contract, e.g. of lease, readily dominates or is judged to dominate the thing. Finally, by the words "with the mind of an owner" there is excluded the possession of him who detains the thing for another. For someone can detain a thing through himself or through another. Detention itself is sometimes called the body of possession.

This is natural possession, which is born, remains, and ceases with the fact.

But, since possession is protected by positive law and is fortified by various privileges, possession to which positive law gives favor, i.e. civil possession, must also be considered. Moreover, positive law can deny its protection to certain natural possessions: thus certain sacred things cannot be possessed by a private person (c. 1510, §2), and c. 1695, §1, concedes an action of retaining possession only after a year. Of itself indeed it sanctions natural possession itself, so that for the most part natural possession is also civil; but sometimes it treats as possessor one who has lost natural possession: thus, by the laws of France and Italy, possession of land is not lost unless it has naturally ceased for a year; or it even judges him a possessor who never was a possessor. This possession is merely civil; or even most civil when it rests on civil law alone and was never natural. In the U.S.A., merely civil possession is called *constructive possession* or also *possession in law* or *legal possession*.

Fuller Explanation. Only the strange and not very scientific etymologies which once were admitted must be recalled. Thus Paulus, L. 1, Princ. D. *De acquirenda possessione*, wrote: "Possession is said from the feet, as if a placing of the feet"; others derived the name from the ancient *pos*, i.e. powerful, and *sedeo*, as if signifying: I sit with power.

2. But what possession is, jurists, according to Molina, tr. II, d. 12, n. 2, 3, always judged very difficult to define. Wherefore the Gloss on L. *Stipulati*, § *Haec quoque*, *De verborum obligatione*, pronounced: "the most expert have not dared to define possession." Then the definition of Hostiensis in the *Summa* was received rather commonly: "the detention of a corporeal thing by body and mind and with the support of right." Molina nevertheless judges that definition to be more causal than formal; he, in d. 17 of the same tr. 2, n. 3, proposes this formal one: "actual or habitual insistence in some thing, proceeding from apprehension by body and mind with the support of right." In this description, the word apprehension must be taken broadly and even improperly, and natural possession is not distinguished from civil. - Lugo, d. 2, n. 59, narrates the difficulty of the jurists, but neglects the question. In the nineteenth century, von Savigny (1779-1861), the illustrious interpreter of Roman law, propagated a definition similar to that of Hostiensis; after him, even the prudent men of our civil law began to speak expressly of the

body and mind of possession. Recently, the celebrated Ihering, at the end of the nineteenth century, denied the necessity of the mind, since otherwise the demented would be incapable of possession; and he contended that the body of possession consists essentially not at all in physical power over the thing or in detention, or at least by no means formally flows from physical apprehension, since every possession is nothing other than a relation between person and thing existing in fact, such as relation the economic utility of the thing, which varies with the thing, requires. He proposed these things while the civil Code of Germany was being made; and he obtained that silence be kept concerning the mind, but not that possession be described otherwise than by physical power over the thing. (Cf. the text written by Savigny concerning the body of possession in the work of the magistrate de Meulenaere, *Code civil allemand*, Appendix and p. 230.) Concerning the body of possession we sufficiently agree with Ihering; we think that the difficulty made concerning the mind is none, since the same would return where there is question of the acquisition of dominion by the demented; namely, the persons who represent those incapable persons can have the mind for them.

For us, from the very notion of right handed down above, the description of natural possession is sufficiently convenient. For it is a relation of prevalence and subjection, existing in fact, between a thing and a person, which, if it is inviolable, constitutes the right itself.

What a Juridical Fact Is. A juridical fact is whatever, voluntary or non-voluntary, influences the various rights of persons. Nor can all voluntary things be recalled to contracts. Wherefore, under the name of juridical acts come testaments. Juridical facts are designations of offices, whether these have been sought or imposed on account of the common good. Juridical facts are delicts themselves and quasi-delicts.

Summary

I. To every right there is attributed some dominion, either toward the public common good, and it is jurisdiction; or toward the private good of the one having it and of his own, and it is the dominion of property.

II. To the dominion of jurisdiction pertains the so-called high dominion, by which, with regard to the common good, perfect society can order and moderate the exercise of the right of property, indeed, with the equality of justice preserved, which here easily becomes commutative and therefore exacts compensation of damage, can deprive a subject of his things. Now we must treat of private dominion alone.

III. In things there can be full dominion of property, which, with at least justice preserved, permits the owner use or enjoyment at will, exclusion of others even when use ceases, and disposition of the thing. By division it becomes imperfect: either, with utility excluded, there is preserved the right in the substance, which is called naked, direct, or also radical dominion; or it is of utility alone without disposition concerning the substance, which is called indirect or useful. This latter dominion can be dismembered, so that separately, in several subjects, there exist various partial rights which together would constitute full dominion. Concerning the individual ones briefly:

IV. 1. Usufruct is the right of using and enjoying the things of another, with their substance preserved.

A fruit is "whatever is accustomed to be born and reborn from a thing." Those which a thing produces are called natural, at least in a broad sense; in the strict sense, if they are begotten by the nature of the thing alone; those which are owed to the industry of men are called industrial; while mixed are those which, as most are, are produced by the joined forces of nature and man. Finally, civil fruits are understood as monies which, from a contract concerning a thing, must be paid constantly after stated intervals: e.g. the annual price of a leased house.

Thus civil laws are accustomed to distinguish fruits according to their very nature; while the Code of Germany, attending also to the origin from which they come, distinguishes fruits of a thing, fruits of a right, and fruits which are owed to a juridical relation concerning a thing or right (art. 99 Cod. Germaniae).

In things which are consumed by first use, quasi-usufruct is constituted; what then, at the end of the usufruct, must be returned, the civil laws define.

2. Use and habitation, in certain laws, signify a circumscribed right merely of using a thing or habitation.
3. Servitude, passively, is a real burden by which an immovable thing is burdened in favor either of another fund (real servitude), or of a definite person (personal servitude).

For the acquisition, exercise, and extinction of servitudes, continuous and non-continuous, apparent and non-apparent, positive and negative servitudes must be distinguished.

5. Superficies designates dominion over all, or at least certain, things which are built or planted on another's fund.
6. Emphyteusis is a right in a thing, by which someone can enjoy another's thing fully for a long time or in perpetuity, under this law, that he pay something (a canon) to the owner, at least in acknowledgment of dominion. Liberation from that obligation is called redemption of the canon.
7. Thus far concerning rights which consist according to themselves. Besides, as accessory rights, existing merely for strengthening the execution of a principal obligation, there are: a) pledge, or a movable thing which, from a contract, is handed over by the debtor to the creditor, so that from it he may obtain payment of the debt before other creditors. Commercial pledge is distinguished from common pledge by facility of constitution and efficacy.

In certain laws antichresis is also acknowledged, as pledge of an immovable thing. And several other forms of security are acknowledged by laws today.

b) Privilege, or a disposition of law by force of which, for extinguishing certain debts (privileged debts), the goods of the debtor, either all (general privilege), or certain ones (special privilege), must serve before other debts (even hypothecary debts).

c) Hypothec, or, in another's immovable thing, the right by which the creditor can satisfy himself before others from the price of the thing. It is distinguished as legal, judicial, conventional.

Dominion can be singular or pertain to several. Undivided condominium is customarily little pleasing to modern laws, so that it cannot be established in perpetuity.

V. On possession. Possession properly is detention of a thing with the mind of an owner: in which definition detention must be taken very broadly; the thing can also be a right; the mind of an owner is opposed to the mind of possessing for another.

It is acquired by some apprehension of the thing - whether true or symbolic, which legally suffices - with the intention of an owner. But as long as the thing remains in our power, possession is preserved by the mind alone; indeed longer, if the law has so established. Possession itself in fact binds the thing to the possessor, so that deservedly he is preferred to others who do not prove a contrary right.

Besides this natural possession, there is also merely civil possession, which, by positive law alone, is judged to remain or to be constituted. There is also possession of right, which profits him who exercises that right as its owner.

Possession of good faith is distinguished, which, strictly taken, is joined with the persuasion of dominion or right, and possession of bad faith, or of him who knows the thing to be another's, or, in doubt, neglects due inquiry.

Simple detention of good faith is that of him who, without the mind of an owner, at least absolute, detains a thing, judging this to be lawful for himself.

Most broadly, every good faith signifies concord between intention and conscience.

Possession is called vicious with respect to him to whom force has been inflicted or possession concealed. Otherwise it is not vicious.

VI. What a juridical fact is. By this name is called every fact, voluntary or involuntary, which gives, takes away, or changes rights.

Chapter II: On the Subject of Right

Article I: General Matters

Physical and Moral Persons. I. Here on earth, all men and only men are capable of dominion and rights. Public authority can restrict this capacity on account of the common good.

II. Men, however, can be considered either as individuals or as several conspiring toward an end. From that very conspiring there arises a new unity, and therefore a new being, not indeed physical, but one which reason knows and which, through the various rights and offices consequent upon its constitution, enters the moral order. But insofar as this being is a subject of right, it also becomes, in the juridical sense, a true person, which is called juridical or moral.

The conspiring itself can have an origin either voluntary or necessary.

And we know that, by natural divine Providence, i.e. with nature as guide, it came to be that men coalesced into perfect societies of the temporal order, which from Nature itself borrow an inviolable existence and rights for pursuing their end. These are civil societies as such; they are also States, or political powers, independent from the citizens or members, and furnished with all rights which are necessary on account of the common good.

But within perfect Society itself, smaller societies are connaturally formed, whose origin must be referred to the free consent of citizens, not to political authority. Those which, on account of their end or means, are illicit or dangerous can be prohibited or destroyed by political authority; but, contrary to what the liberal school contended, they are neither created by the State nor do they obtain from the State the right of existing with necessary means. That right flows immediately from the very right of physical persons. Formal recognition of them can add protection and rights; but even before that recognition they exist as true persons. Yet because they can more easily than individual men become harmful, and because the faculty of providing for the common good cannot be renounced by the State, there is a more frequent cause and a more frequent use of prohibitions by which liberty of acting or possessing is contained within narrower limits for moral persons.

Historically, however, the laws which ordered the new affairs of France at the end of the eighteenth century were very hostile to societies which associated persons of the same art or profession, or intended a non-economic end; while, on the contrary, they began to favor greatly societies of things, or industrial and mercantile societies. But that intolerance toward personal societies, which hostile inclinations toward the Catholic Church and therefore toward religious Congregations nourished, could not endure for long; and, with unequal speed, for example under the name of syndicates, from the middle of the nineteenth century societies of persons began to be publicly recognized. At the same time lucrative societies have abused persons and things not a little; and now, increasing constantly in extension and wealth, they have become so powerful that they have seemed able to decide about war and peace and to make public authority itself subject to them.

Present civil laws. At present, for every association and destination of things to a special end, even philanthropic or religious, the laws of Holland, of the United States of North America, and of England are most convenient; corporate law has been developed most of all in Germany.

- Although the German Code, art. 21, for the juridical capacity of societies which do not pursue an economic end, requires only inscription in the register of the *Amtsgericht* (inferior tribunal), nevertheless by article 81 of the introductory law the laws of the States are confirmed by which the law alone can confer the same capacity on religious associations. The more liberal Code of Austria, art. 26, regularly confers on lawful societies the same rights by which singular persons enjoy. For the rest, the Codes of Latin law do not agree in this matter. After the Code of France, which seems completely to ignore juridical persons, the Codes of Spain, art. 35; of the Mexican republic, art. 39; of Portugal, art. 33, require the intervening authority of law in order that a moral person come to be; while the civil Code of Switzerland, art. 52, exempts ecclesiastical and family foundations, and all honorable associations which do not pursue gain as their end, from inscription in the commercial registers which is necessary for societies which have profit as their end, in order that they become juridical persons; and art. 54 sanctions the principle of the capacity of these persons. The Code of the Brazilian republic, art. 16, is content with inscription in the public registers in order that civil or religious associations be constituted and be moral persons. The recent Belgian law of 27 July 1921 now procures great facility for obtaining civil personality [1], while France so arranged the law of 1 July 1901 on the liberty of associations that by force of that law very many religious were punished with exile.

It is helpful to compare briefly the liberal regime of Holland with the regime of France. In Holland, the juridical constitution of the Church is sanctioned by art. 168 of the Fundamental Law itself. But the law of 22 Apr. 1855 reserved to a special law the recognition of a moral person which wished to exist indefinitely or for at least thirty years; but below thirty years, royal approval of the statutes suffices, which can be denied only for reasons of the common good, to be expressed in the decree itself. Wherefore most associations are constituted by this more level way for 29 years and 11 months; when that space has elapsed, they are again confirmed. Thus religious houses exist civilly. But those ecclesiastical associations which pertain more intimately to the organic constitution of the Catholic Church borrow their juridical character from the law of 10 Sept. 1853. The laws of the Church and the ordinations of bishops concerning these associations obtain civil firmness as legitimate statutes. But as to capacity, moral persons of themselves are equated to physical persons; nevertheless they cannot have usufruct beyond 30 years, and certain of them, e.g. churches and religious institutions, need royal approval in order to accept legacies and donations. Cf. Duynstee, op. c., n. 25-40. - In France, however: a) undeclared associations are not a moral person; but alongside them a certain society, as existing in fact, has been admitted by judges; b) declared associations can receive no donation, no legacy, but only assessed contributions of members; c) associations instituted because of or on the occasion of the war, if they have been permitted, can receive, besides the contributions of members, also liberal gifts; d) associations which have been declared "publicly useful" (*d'utilité publique*) must be erected by decree; then they have full faculty of acquiring by gratuitous title; e) associations of religious congregations (*congréganistes*) are forbidden to exist without the authority of law. The law by which they are permitted defines in what way they must exist; f) syndical associations can freely have every kind of possessions and acquisitions [2]. - Recently also, as legitimate for ecclesiastical goods, there have been recognized diocesan associations, concerning which there is the encyclical letter of the Supreme Pontiff *Maximam gravissimamque*, 18 Jan. 1924. - We omit lucrative societies, which continue to enjoy protected liberty.

Therefore civil society still must be purified more fully of the errors of the liberals who contended: a) that moral persons can be created and suppressed by the State alone; b) that while everything which is not prohibited is lawful to physical persons, moral persons can do only what has been conceded to them; c) that associations which go beyond an economic end must be regarded as dangerous and suspect; d) that the goods of an extinct moral person can be usurped by the treasury.

Furthermore, of itself, not only by public power but also by private agreement, certain goods can be devoted to a definite end, for so long a time or in perpetuity, that that universality of things seems to imitate a person in some way.

Thus far concerning civil society. But religious society, or the Church, by the positive will of Christ its founder has been so constituted that all its rights, for dispensation, have been committed to Peter and his successors.

Hence, independently of the members of the Church, the Church and the Holy See, from the divine ordination itself, have the character of a moral person (c. 100, § 1); while the rights of lesser societies in the Church exist dependently upon hierarchical power. Moreover this dependence can assume various forms, so that it can be more or less open and explicit. But the discipline of today, by force of c. 100, § 1, is that "the other inferior moral persons in the Church receive that [character of a moral person] either from the prescription of the law itself or from a special concession of the competent ecclesiastical Superior given by formal decree for a religious or charitable end."

By the prescription of the law itself religious Institutes and religious houses are persons.

Canonical law distinguishes collegiate moral persons (or persons composed of persons) and non-collegiate ones, such as benefices and universals of things applied to a definite end.

Nothing further would have to be said in this chapter, unless the peculiar condition of certain persons, of itself or by positive law, gave place to a peculiar regime which affects the capacity of acquiring and disposing. They are children under family power, wives, clerics, and religious. But the cause of the peculiar regime is one thing for the first two classes of persons, another for the latter two.

[1] *Loi sur les associations sans but lucratif*. Cf. on that law the annotations of R. D. Ferdinand Claeys Bouuaert†.

[2] Cf. Colin and Capitant, I, p. 953.

Article II: On the Various Persons in Particular

§ 1. On Children Under Family Power

I. Principles. Considered solely by the right of nature: 1) children are capable of separate property; 2) from piety, parents and children contract a mutual obligation of bearing help according to necessity and according to the means which they have; 3) the natural weakness of lesser age demands administrative tutelage; 4) the express or tacit consent of parents and children less separates temporal real rights as to possession itself; as to management itself; as to grave matter of injustice; as to the obligation of restitution after injury has been done.

— From this various corollaries flow.

1. On the capacity of possessing, a) By the law of nature itself, neither a madman nor a child under family power is struck by any incapacity of right: he is a person; therefore he is a subject of right. And from nature itself he has certain things inviolably bound together with himself: members of the body, faculties, reputation. But the condition of acquiring, at least stably, exterior goods seems lacking in them, so long as they are incapable of human acts, if only the natural law is considered; nor is their need provided for by natural law in such a way that anyone can efficaciously supply their will; but they are protected only by the offices of piety and charity. Cf. Molina, *Iust*. tract. 2 d. 18, n. 3; Lugo, *Iust*. d. 3, n. 14-17; Tanquerey, III, 143. Positive laws ought, and are accustomed, to supply the natural law in this matter.

b) But from the time when they are capable of true consent, the full aptitude of separate dominion has been conferred on them by the law of nature.

2. On the mutual obligation of support, a) Children, of themselves, labor under very great need. To come to the aid of this is an office of piety imposed on parents. Yet because the immediate title of the obligation seems unable to be demonstrated as anything other than need, the natural law permits parents to compensate themselves from the goods of the children for the expenses of support and instruction; nor can children urge the obligation of support except insofar as they are destitute of goods. Cf. Tanquerey, III, 148.

b) In turn, however, piety obliges children to provide, insofar as they can, for the accidental need of parents.

c) Although piety does not beget any strict right to a thing, it nevertheless effects that he who takes for himself what is owed from piety, which otherwise would not be paid, cannot be accused of violated justice, since the owner cannot be reasonably unwilling.

For a similar cause, it is whole for parents, insofar as there is need, to provide for the common necessities of the family from the wages or goods of the children, since thus they execute the offices of piety of the children.

3. The very incapacity of lesser age gives a right to parents or to those who bear the care of children or of madmen, that they prudently administer their affairs, unless another has legitimately undertaken that office. And besides strictly so-called expenses to be repaid, they do not seem able to be prohibited, in rigor, from demanding an equitable compensation for the labor rendered.
4. On express or tacit consent, a) Various little gifts which parents or relatives, on the occasion of a feast or first communion, offer to children who are self-possessed, are fully acquired by these children, so that not even the parents themselves can take those things from the children with justice preserved. But clothes which children wear have been given to them for personal use, so that without injustice they cannot be sold by them or exposed to play.

b) A child, even impubescent or younger by birth, is bound of himself to compensate the expenses which are reasonably made for him, both from his own goods and by ordinary labor [1] congruent with his state. Yet one who has retained for himself a part of his wages cannot immediately be accused of injury, since some think that the obligation of supporting children lies on parents absolutely, without

consideration of the resources of the children. Much less, because of easily presumed condonations, will he have to be condemned to restitution. Yet he must be earnestly exhorted to strive to act sincerely and liberally with his parents and to bear help to them with a willing mind, which piety and gratitude require from him.

c) Whatever of money the child has attributed to his parents from his own labor is presumed to be given absolutely to the parents.

d) In itself, indeed, Lessius (L. 2, c. 12, n. 81), whose authority in this matter is appealed to by many, uses this principle: that a son, no less than a stranger, is worthy of pay for his labor. Wherefore, if he has rendered to his father useful labor which the father would obtain neither by himself nor through another gratuitously or for less, the son can receive as much as a stranger would receive. But tacit renunciations must be observed. Now, until they have come to that age at which children are accustomed to have a state (which age varies by region and also by civil condition; but in Belgium, France, and Italy it can be estimated at about 25 years), they are judged to cooperate gratuitously with their parents.

After that age, the matter becomes less expedient. With express agreement set aside, which of itself is desirable, these things seem to have to be attended to. Cooperation must be presumed gratuitous: a) if the other children render similar labor and have the same ratable part to be expected from the common mass; b) if the cooperation is useful to the child himself, insofar as by it he is prepared for a state, especially if he himself is to succeed into the place of his father in the office; c) if the parents were poor, or if the modest gain of the child is compensated by his support. - But it is least of all to be presumed gratuitous if the cooperation of the children or the right of inheritance has been notably unequal, especially if by a certain shamefacedness the children are prevented from asking for pay.

It happens that pay for such unequal labor is expected from a future legacy. What then, if, either forgetful of the matter or prevented by death, the parents have remunerated the special services of some son or daughter by no peculiar disposition? In that matter, rather thorny, children who are pressed by temporal necessity seem to have to be distinguished from richer ones. A child who from a rich inheritance wishes to compensate himself for frustrated hope, even if this had been equitable, does not seem to be favored; but on the contrary, if some reason of temporal need, even broadly so called, has acceded, reasonable compensation does not seem to have to be refused. For it can be said that in these circumstances the services were not rendered except under the condition of compensation of this kind. But we shall more easily be able not to condemn compensation already made than to promote it by antecedent counsel.

e) Various causes of incapacity, abuse, prodigality, or profusion of goods permit those closely joined, such as parents and children are, that for the good either of the abuser himself or of the family, they openly or secretly usurp a certain administration of the family property. Nevertheless, care must be taken that they do not make their own what belongs to others, nor procure any other use of the things except that which the other ought reasonably to concede.

f) On account of intimate conjunction, authors judge that grave matter of injustice can be doubled, at least when there is question of children. It seems that the same must be said of parents.

g) What a child has received for a definite end, e.g. studies, he cannot expend otherwise with justice unimpaired. Yet when there is question of the debt of restitution, the question is certainly to be

moved only when the matter seems sufficiently extraordinary. And then often the child himself, by a sincere answer, will be able to know the intentions of the parents better than the priest and therefore to solve the knot itself of the matter.

Counsels in this matter look to this: a) that we promote mutual benignity and liberality; that they not be solicitous about moderate things; b) that we inculcate in children a grateful and devoted mind toward parents, who sometimes by sweat and vigils have furnished them the means of a more cultivated education; c) that we advise clear and express agreements, and that equitable compensations not be deferred to testaments.

[1] The fruit of extraordinary labor or extraordinary gain, say the prize of a lottery, the child can ascribe to himself. Cf. Génicot, I, 471.

II. What Positive Laws Have Sanctioned. A) On legitimate children. 1. All positive laws set parents, or other faithful persons, over the management of the goods of those who are weaker by age or mind; and they admit that these persons can efficaciously have the intention of acquiring for them.

2. On the cautions by which minors or impubescent persons are protected, lest they imprudently contract obligations, the discussion will soon return below in the general exposition of contracts.

3. But, besides the protective incapacity of age, by positive laws other things are not rarely established concerning the patrimony of children on account of the useful sanction of the family bond. This is now being treated.

a) Latin law. By ancient Roman law, all goods pertained to the father of the family, i.e. to the head of the family, who could be younger by birth or impubescent. But gradually the full incapacity of children was tempered, so that, in the law which for a long time ruled the greatest part of Christian Europe, there was distinguished the *peculium castrense*, acquired on the occasion of military service; the *quasi-castrense*, acquired on the occasion of an ecclesiastical benefice or of a magistracy or public office; the *profecticium*, composed of goods coming from the parent or given on his account; and the *adventicium*, consisting of other goods.

Parents had full dominion of the *peculium profecticium*; they had usufruct of the *peculium adventicium*, certain goods excepted, while paternal power remained; while the *castrense* and *quasi-castrense* peculium pertained fully to the children. From that law Latin law has its origin. In French, Italian, and Belgian law, goods which children under family power, constituted under paternal power, acquire by separated labor or industry, or which have been donated or bequeathed to them with an express condition excluding the usufruct of the parents, must be distinguished: these are fully attributed to them. In the other goods of children, the parent who exercises paternal power obtains a legal usufruct of special character, in Italian law, so long as that power remains; in Belgian and French law, until they have completed 18 years of age. Often also excluded from usufruct are monies which have been deposited by the child in the public savings bank. But all the goods of the children (again excepting privileged deposits of the savings bank) are administered by the same parent.

Similar things are disposed by Spanish law (arts. 159-166) and by the law of Latin America. In the Spanish Code, separated labor is understood to be that of a child who, with the parent consenting, lives outside the paternal home. In the Argentine republic, excluded from the usufruct of parents are

goods which the child acquires on the occasion of a civil, military, or ecclesiastical office; which the child acquires by his own labor or even by fortuitous chance; which have been donated or bequeathed with a clause excluding usufruct; which he acquires by inheritance, because the father could not be heir.

By the Brazilian Code, excluded from the usufruct of parents are goods bequeathed or donated with a clause excluding usufruct, goods bequeathed to the child for a certain and determinate end; and excluded from usufruct and administration are goods acquired by reason of military service, magistracy, or public office; goods bequeathed or donated with a clause excluding administration (arts. 390, 391). - The Code of Holland distinguishes the regime of paternal power and the regime of tutelage. The former ceases by the death of either spouse or by the dissolution of the marriage. Then the regime of tutelage succeeds, which the surviving parent will regularly have, while nevertheless preserving the usufruct until the child shall be of age or emancipated (366 ff., 100 ff.). It is proper to the Austrian Code that it denies legal usufruct, but concedes the universal administration of goods to the father (arts. 139-154).

b) By the law of the Germanic Code, the father or mother, if exercising paternal power, preserves the usufruct of the goods of the child up to the child's majority or marriage (unless it was celebrated without the father's consent, when that was necessary). Excepted are things for personal use, those things which the child has acquired by his own labor or by a personal art permitted to him, or which have been bequeathed or donated to him with a clause excluding usufruct. The father can renounce this usufruct (arts. 1649-1688).

c) The laws of England attribute no right in the goods of children to parents. But if the child earns wages, parents are not bound to support him gratuitously. Stipulations concerning support between children and parents are permitted.

d) In the U.S.A., the father, or after his death the mother, has a right to the services and gains of the child as long as the non-emancipated child is received under their roof and supported by them. Nothing else has been established.

B) On illegitimate children. They can be unacknowledged, acknowledged by either parent or by both, and finally legitimated. The unacknowledged child of himself obtains the condition of an orphan without family; nevertheless he is not prohibited from demonstrating his filiation with respect to the mother, indeed also, according to several laws, with respect to the father. And the certain mother is accustomed to give him a name and ought to perform the offices of a mother. For the most part, as long as he is younger by birth, he is represented by a tutor. Acknowledgment, when it is permitted (for often adulterine and spurious children are forbidden to be acknowledged), confirms mutual obligations, paves the way for legitimation, and produces other juridical effects in one law and another. By legitimation an illegitimate child is equated to a legitimate child. (Cf. nevertheless above, n. 302, on canon law.) Everywhere legitimation by the subsequent marriage of the parents is admitted.

A mode also often admitted is a decree of the Prince or of the supreme magistrate of the republic. For this the Code of Germany, arts. 1723-1740, substitutes a declaration by which, at the petition of the father, public authority declares the child legitimate.

By the Austrian Code (165-171), illegitimate children assume the name of the mother, can demand support and instruction from the parents, but are represented by a tutor. By the Code of Holland, an illegitimate child assumes the name of the mother; yet, when acknowledged, he can use the name of the father; but except for the obligation of support, with which the father is burdened, an unacknowledged child has no juridical relations with the parents. By the Code of Italy (179-193), an acknowledged child takes the name of the parent by whom he is acknowledged; the father's, if he has been acknowledged by both parents; and both in obligations and in rights he becomes already sufficiently similar to a legitimate child; but legitimation is obtained both through the marriage of the parents and through a royal decree (194-201). Spain uses a similar law. The Brazilian Code (379-395) directly subjects to paternal power, insofar as they are minors, legitimate children, legitimated children, legally acknowledged children, and adopted children. An unacknowledged child is subject to the mother. The parent who has acknowledged him obtains usufruct in the goods of the minor. By the law of 2 June 1907, the condition of illegitimate children has been more fully ordered in France. Paternal power, not excluding usufruct, is assigned to the parents who have acknowledged them; nevertheless the parent who exercises paternal power administers the goods not as parent but as tutor. - Cf. Colin and Capitant, I, 588 ff.

By the Code of Germany (1589, 1705-1718), an illegitimate child is, toward the father (except for the obligation of support) and toward his family, as if a stranger; while toward the mother and her family he is juridically as if legitimate. He is called by the name of the mother; nevertheless he always has a tutor.

By the law of England, the mother possesses paternal power over illegitimate children; by acknowledging the child, the father contracts merely the obligation of supporting him.

§ 2. On Wives

I. Principles. 1. From the very nature of marriage, rather than a spoiler of goods, the wife obtains the husband as a helper of administration, and the husband assumes the burden of supporting the wife insofar as she is in need. At the same time, however, it is consonant with the wishes of nature that a certain society of goods be entered between each spouse.

2. But because the wife is not a maidservant but the companion of the husband, she can easily presume the consent of the husband in order to make expenses from common goods which the wife is accustomed to care for; she is permitted to give modest and daily alms; if the husband squanders goods, she can, in order to avert grave damage to the family, or to preserve the right which the family has of being supported from the common goods, withdraw those goods, hide them, or place them safely. But hallucination must be guarded against.
3. Often among the common burdens of marriage are the supports which must be given to needy parents of the wife or to offspring received beforehand. Indeed, where the goods of the wife do not suffice, the husband himself will be held according to his powers to furnish these supports.

With these things set aside, they permit the wife, even beyond what she can give to other poor, moderately and with attention to the condition of the husband, to succor parents or offspring who live miserably according to their state. If, however, she must greatly exceed the limits of customary alms, she ought to take from her own goods whence she may furnish these things. If these are

lacking, she should ask the consent of the husband. If he were not reasonably unwilling, the wife could compute what she gives into the part of the goods which will fall to her after the dissolution of the marriage.

4. Thus far those things which already have force of themselves without consideration of positive law. But the positive regime itself of goods, which is introduced variously according to various laws and private agreements, affects obligations of conscience not a little. Since they are many and sufficiently complex, the exposition of them exceeds the province of the moral theologian. Indeed care must be taken lest, by an exposition which could be regarded as sufficiently complete, those ignorant of law be deceived. Wherefore we shall recall those laws by certain summary heads, so that at least an occasion may be given of prudently doubting and interrogating experts.

Moreover, for the utility of conscience, each one ought chiefly to see these things in his own region: 1. from what goods the burdens of marriage must be satisfied; - 2. what goods are freely administered by the wife, or at least pertain fully to her as to dominion and usufruct; - 3. what rights belong to each spouse in common goods. For it happens that, during marriage, the husband himself is the sole arbiter and master of the community, only certain acts being prohibited to him. And then, as long as he has contained himself within the limits of the law, he cannot be accused of injustice. But if he were merely the administrator of the society, he will not be able to injure the wife's part.

II. An Adumbration of Positive Laws. 1. Various beginnings of positive law. a) The assumption of a woman as wife can be considered as an acquisition which procures for the man useful work for managing the domestic matter and necessary work for begetting children: then the bride will have to be redeemed for a certain price from those in whose hand or power she was detained; which custom belonged to the ancient Romans, for a long time represented by the symbolic ceremony of coemption (cf. Vidal, *Institutiones iuris civilis Romani*, n. 317), and of the Orientals; and it still perseveres among the barbarians of Africa today. b) It can also, and better, be conceived as the reception of a companion who will share the offices and burdens of common life and of supporting offspring. Then she herself, or those who hand her over, will strive to bring to the husband that whereby the matrimonial burdens may be lightened for him. This can be done in two ways, either by a certain society of goods, or by a dowry constituted, i.e. by a stable deputation of certain goods to compensating the common burdens. - c) Finally, the causes of persons and of goods can remain separated, so that the logical consequences of common matrimonial life seem to be ignored by positive statutes.

Omitting the first way, which today has become antiquated among cultivated peoples, the second has become most common, so that the third can be called proper to the law (*common law*) of England and the U.S.A.

2. Nuptial pacts. Everywhere it is permitted to the parties to order by private agreements the regime of goods which will be in force through the marriage. And because of their importance, those agreements for the most part must be drawn up by an authentic act before a competent official (notary).

In Latin law, these agreements can no longer be made or changed after marriage. Nevertheless, except the Swiss, Costa Rican, Guatemalan, and Mexican republics (1979), whose laws permit change even

after the marriage has been celebrated.

But by Germanic, American, and English law, agreements can be made or changed even after the nuptials have been entered. But in England there is no use of agreements of this kind.

Furthermore, the Latin laws and the Code of Germany are accustomed to foresee and order the chief forms concerning which the parties may easily agree.

Thus by the Code of France and of Belgium the regime of community is distinguished, which for the most part comes into use in Belgium and in the northern part of France, and the dotal regime, which prevails in southern France. In the dotal regime, by the law itself there are distinguished dotal goods, which the woman brought as dowry or which were given to her in the matrimonial contract, and the other goods of the wife, which are called paraphernal. The man administers the dotal goods, enjoys them, but ought to provide for the expenses of common life. During marriage, dotal goods, at least immovable goods, certain cases excepted, cannot be alienated. The wife administers the paraphernal goods and freely disposes of the revenues. If, however, the wife should have no goods except paraphernal goods, she will furnish the common expenses according to the proportionate part which agrees; and if nothing agrees, she will expend a third part of the revenues for this (art. 1575).

Community is distinguished by this mark, that not only (which is common to every regime) is a certain common mass constituted for bearing the burdens of marriage, but besides this, a certain society of goods is effected, whose passive obligations are also determined both by agreement and by law.

N. B. The burdens of marriage are properly the expenses of common life, and the obligations which flow to the spouses from marriage itself; among these, for the husband, the obligation of supporting the wife is placed. Hence, for example, the education of children of a preceding marriage does not come under this name either properly or always.

Concerning common goods, the wife can do certain things as companion of the husband; certain things from the presumed will of the husband, certain things by reason of the destination of the common goods. Cf. Lugo, *Iust*., d. 16, n. 63.

Community can be constituted with unequal amplitude. For there is distinguished universal community, community of movable things and of things acquired through marriage, community merely of things acquired (*di acquisti*, *communauté réduite aux acquêts*). Community can also simply be excluded or the regime of separation positively established. The regime of excluded community indeed takes away usufruct from the husband, but not administration of the goods. The regime of separation of goods takes even this away from him.

The regime to be advised will vary according to the dangers to which the business affairs of the husband are exposed; according to the equal or unequal possession of the family property; according to the condition of the spouses, who either both marry for the first time, or have children from a prior union; according to confidence in the prudent administration of the husband. Negotiations concerning these pacts are accustomed to take place between the parents of each party.

Observe that, in the nuptial pacts of Belgium and France, certain things can be established concerning a future inheritance, although, outside those pacts, clauses of this kind are altogether prohibited and invalid. Nevertheless that faculty is not conceded in every Latin law.

3. If no nuptial pacts have been made, the law itself is accustomed to define the regime; and:

a) In Latin law there is established the regime of some kind of community, whether universal, as in Holland, Lusitania, and the Brazilian republic; or of union of goods, as in Switzerland [1]; or of movable things and things acquired through marriage, as in the Code of France and in several Codes of Latin America and in the Canadian Code Q.; or only of things to be acquired through marriage, as in the Code of Spain; - b) By the Code of Germany there is established a community of administration in the possession of the husband, and there is attributed to the husband the usufruct of the goods of the wife with the burden of bearing the expenses of marriage; - c) in England and the U.S.A. goods remain separated. Nevertheless, a few States of North America render common the goods which are acquired through marriage.

[1] In Switzerland there is distinguished, besides the regime of separation of goods, the regime of union of goods and the regime of universal community. In both, one patrimony is effected from the goods of the spouses, pertaining to each; but universal community embraces more, indeed all, goods.

I. On Dowry. By the name of dowry there is generally understood a certain sum of goods which are donated either to the wife, or even to the husband, for compensating the burdens of marriage. In every regime a dowry of this kind can be brought; and, according to the chosen regime itself, it will remain the property of one or the other or will become common, nor is it ruled by a special law. - In the dotal regime, the dowry brought by the woman has a peculiar statute, in the manner sketched above. - But in England and the U.S.A. (from *common law*) and also in the Canadian Code Q., by the name of dowry they understand goods by which provision is made rather for the support of the wife and children. For *dower*, dowry (from the ancient word *douaire*), in North America and in England, is the life usufruct which the widow obtains in part of the goods of the deceased husband. In the Canadian region, dowry, which can be legal or conventional, falls to the surviving wife; or if she herself dies first, to the children born from that marriage. - Besides, while other laws, e.g. those of Belgium and France, create no obligation of dowering, the Code of Spain (1340, 1341) obliges the father or mother or surviving parent to give to a legitimate daughter in dowry half the part of the presumed legitimate portion, unless, as a minor, she married without the consent of the parents, or unless the daughter already has equivalent goods of her own.

For the security of the dowry, when the dowry must be restored, laws either themselves constitute a legal hypothec in the goods of the husband, or permit a constitution of this kind.

Article III: On Clerics

Various Goods of Clerics. Various goods fall to clerics:

1. By a profane title: whether by inheritance, or by donation or legacy, or by profane labor or industry. Those goods are called patrimonial, and they are subject to no peculiar rule.
2. By title of a permanent sacred office, and this in two ways: a) either they are the revenues of a stable benefice. Concerning these c. 1473 has this: "Although a beneficiary should have other goods that are not beneficial, he can freely use and enjoy the beneficial fruits which are necessary for his honorable support; but he is held by the obligation of expending the superfluous for the poor or pious causes, with the prescription of c. 239, § 1, n. 19 preserved." By this prescription, Cardinals obtain, from privilege, the free disposition of those fruits, with

sacred furnishings excepted, which they must give to a pious place or to a religious or ecclesiastical person, unless they prefer (those who have domicile in the City) that they yield in fact to the pontifical sacristy. Cf. c. 1298.

Nevertheless, it is not established that the obligation is of justice. Wherefore the cleric indeed sins gravely against religion who badly expends a quantity much greater than is required for grave theft; but neither is he himself bound to restitution; and those who, without deceit or unjust means, receive those goods from one distributing badly, are easily also immune from mortal sin. You will find the question set forth at length in Carrière, *De iustitia et iure*, I, 153-176.

b) Or they are oblations which are called curial rights or rights of stole. These are owed, for example, to the pastor as pastor, for baptism, marriage, funerals, although he did not intervene in them (c. 463, § 3). Concerning these, below.

3. By title of an exercised sacred function: they are stipends. Although the Church has the right of obliging a cleric that superfluous goods be destined to pious uses, it has not instituted this obligation. And choral distributions are equated to stipends.
4. By reason of parsimony. Goods thus obtained, as fruits of personal industry, are assimilated to patrimonial goods.

Goods obtained by oblations and stipends are called casual goods (although there is not one use of the word).

To which genus of goods, therefore, must the rights of stole be ascribed? The opinion more received today assimilates them to quasi-patrimonial goods (Carrière, I, n. 182).

Now, however, it must be observed that by force of c. 1410, through the rights of stole, and also, if all revenues of the benefice consist in choral distributions, through two parts of the distributions, the dowry of the benefice can be constituted. But if this is done, they are then shown to put on the character of ecclesiastical goods. Hence the question arises whether or not the superfluous goods of the dowry so constituted must be applied to the poor or pious causes, no otherwise than the beneficial revenues of goods whose ownership is in the juridical entity itself. If you consider the general words of c. 1473, commanding, without another distinction, that beneficial fruits superfluous to support be expended for the poor or pious causes, you will affirm the obligation; but if, on the other hand, you consider that up to this point, before the erection of the benefice, those same goods were acquired fully by the rectors without this burden, and that elsewhere, e.g. in Belgium and in France, from the very responses of the S. Penitentiary of 19 Jan. 1819 and 9 Aug. 1821, these things pass into the free dominion of pastors, you will conclude that that question cannot be well solved without the authority of the Holy See. (For the responses cf. Carrière, *De iustitia et iure*, I, 194.) - Much more will this intervention be necessary if the diocesan Prelate wishes that those superfluous goods be assigned by pastors to an end which he has defined. Thus, in more than one Apostolic Vicariate, rights of stole have been accustomed to be computed into the annual sum which the Apostolic Vicar must allot to missionaries for their support.

In Belgium (and formerly in France) and in the parts of Holland which in the year 1801 (of the Concordat) pertained to France, the annual salaries which are paid by the Government to bishops,

canons, and pastors (even those who are called *succursalistae*) represent the fruits of a benefice and are ruled by their law (cf. resp. Paenit. 19 Jan. 1819; 9 Aug. 1821). But by that law there are not ruled the annual sums which are paid to vice-pastors, since these do not have a benefice - (thus De Brabandere against Marres) - nor supplements which are sometimes added by municipalities or parishes to the annual pension; nor pensions which are assigned to sacred ministers after they have discharged their office: for they do not regard sacred functions. (Cf. Génicot-Salsmans, I, 475 note 1; Aertnijs-Damen, I, 663 Q. 5, who thinks differently about supplements.)

Counsel. Of itself it is fitting that clerics destine to pious works whatever remains to them of emoluments which they have obtained from sacred functions or on their occasion. Cf. Lehmk., I, 1072 note, p. 607, who is lengthy in handling the whole question, n. 1072-1075.

On Oblations. Monies collected for a certain end or handed into boxes must be applied to that end. Oblations freely made by the faithful in the territory of a pastor and in the place subject to him (therefore not in the churches of regulars, seminaries, etc.) are presumed to have been conceded to pastors. Today, however, the intention of the faithful, from sufficiently common practice, seems rather to be that only oblations made during Mass at the altar, or for certain ministries, should fall to the pastor. Cf. De Meester, *Juris can. Comp.* II, n. 836, 837.

The taxes prevailing from legitimate custom are owed by the faithful on the occasion of the administration of the sacraments. The pastor has the right of demanding them, even if he himself did not perform the office by himself, yet in such a way that he does not deny gratuitous ministry to those who are not solvent (c. 463). "Those refusing are to be punished by the prudent judgment of the Ordinary until they have satisfied" (c. 2349).

Article IV: On Religious

General View. From the religious state itself, as such, no incapacity flows. And of themselves religious preserve their rights entire, to reputation, members, body, soul, but they must satisfy the special obligations of obedience.

As to goods of fortune, solemnly professed religious, by common law, can neither keep the goods which they possessed nor acquire other goods for themselves (cc. 579, 581, 582). The incapacity which follows solemn profession had its first origin civilly. Simply professed religious must, before profession, cede the administration of their goods to whom they wish, and, unless the constitutions provide otherwise, they can freely dispose of the use and usufruct of the same goods (c. 569). In a religious Congregation, before the profession of temporary vows, the novice must freely make a testament concerning present goods or those perhaps to come, which testament he cannot lawfully change after the vows without the license of the Holy See or, if a cause urges, without the license of the Superior. Nor is it lawful for those professed in religious Congregations to abdicate dominion of their goods by gratuitous title through an act between the living (cc. 569, 579, 583). - Finally, it is common to professed religious that whatever they acquire by their industry or in view of religion, they acquire for the religion (c. 580, § 2).

Summary

— I. The subject of right can be physical persons and moral persons, i.e. beings which indeed do not subsist physically, but which, on account of a true unity perceived by us, participate in the character

of person in our moral estimation. And this fully indeed, if there is question of the Catholic Church and the Apostolic See, which by positive divine law, or of perfect civil society and the State, which by divine-natural law, exist inviolably for themselves on account of their end or the common good, and therefore have rights; less fully, if there is question of inferior moral persons, whose personality is either created or completed by formal recognition of public power. It is completed, if there is question of associations which of themselves have a certain unity; it is created, if there is question of certain things or patrimonies which are assigned to some end in such a way that they seem to exist quasi-separately.

II. The rights of inferior moral persons are often greatly restricted by public law.

Today indeed all physical persons of this earth are capable of dominion; but the capacity of certain persons is circumscribed by positive law for various causes. Thus:

1. Children under family power, as long as they are incapable of human acts - no otherwise than the demented - acquire and possess goods through those who represent them. And afterwards also, by various dispositions of law, they are protected against the weakness of age. Generally they do not administer their goods; indeed often some usufruct of their goods and whatever they gain conjointly with their parents is attributed to those exercising paternal power.
   Parents, from piety, owe support to them, at least when they are in need, and they cannot be unwilling that a son, in necessity, take for himself as much as is owed to him from this title. A son of himself is held to compensate reasonably the expenses made for him and to bear help to needy parents.

It must be estimated from the express or tacit will of the parents what a son can or cannot do concerning the goods of the parents: thus what has been given for a certain end he cannot, with justice preserved, apply to another end, especially a less useful or reasonable one. Likewise, from the circumstances it must be estimated what labor the son is judged to render gratuitously to his parents: as if they are poor, or if the gain is modest, if he cooperates together with others, if the labor gives him skill. - On account of a proportionate cause, it will be lawful for the son himself to seize some administration of the family property. - Even things which have been done unjustly will not rarely, because of tacit condonation, induce an obligation of restitution. - Finally, an occult compensation already made can more easily be excused than permitted beforehand. But it is desirable that by clear agreements the occasion of compensations of this kind be avoided.

2. The wife's patrimonial regime is defined very much from nuptial pacts. Often the husband administers the wife's goods and must give the consent of his wife in several juridical acts. She, as subordinated to the husband and, by presumption, less fit, must admit this. But as companion she is permitted to give modest alms and can reasonably presume several things.
3. Secular clerics possess and administer their patrimonial goods, indeed, of themselves, those which they gain on the occasion of a sacred function, just as other goods. Nevertheless, beneficial fruits which are superfluous to honorable support, if you except Cardinals, must, at least from religion, be deputed to the poor or to pious works. Which oblations freely made by the faithful fall to them must be judged from the intention of the faithful, which received usage

declares. Today only oblations made during Mass at the altar, or for certain ministries, are presumed to fall to the pastor.

And now, on account of c. 1410, it must further be observed whether perhaps oblations have been constituted in dowry of the benefice.

4. Religious, by positive law alone, become incapable of certain acts and are obliged to do or omit certain things, as is explained in tome III, n. 125-134.

Chapter III: On the Object of Right

I. What Things Can Become One's Own, What Cannot. 1. Never can the person himself, but only a thing, pertain to a man as his own. Of themselves all things can become one's own: exterior things and the powers of the body, members; not only material things but also immaterial things, say our higher faculties; not only things physically existing, but also beings of reason, or things which are in moral estimation, e.g. reputation.

Of themselves, I say. For law can place certain things outside commerce, so that they cannot come into the private or quasi-private dominion of anyone: say streets, in civil law.

Nevertheless, several things can be the object only of imperfect dominion. Thus full dominion of the body and faculties is reserved to God, while merely useful dominion has been conceded to man. Reputation, however, is situated in the perfect dominion of man.

Nor can all things be possessed by all. Thus full useful dominion of faculties, powers, and life cannot belong to another than the man who is constituted from them. Thus also certain sacred things can be excluded from the dominion of laymen by ecclesiastical authority. But what parts of the useful dominion of a person can be possessed by others is established differently in different laws and periods of time. Once a very ample power over slaves was conceded, while today very slight power belonging to another is conceded by civil law, since human works cannot be leased in perpetuity; nor can one who has promised works be compelled against his will to furnish them, but is held only to damages for the refused work.

2. Not only things, but also rights concerning things can be possessed.

Indeed, only concerning perfect dominion can it indifferently be said either that the thing itself or the dominion of the thing is had. When dominion is imperfect, the right rather, or more directly, than the thing itself is situated in our dominion. Wherefore, since the English deny that perfect dominion of an immovable thing can be had, they quite logically designate by the name *estate* the quantity of right possessed, and speak of *estate* rather than of the things themselves.

3. Certain things could not be or become one's own without positive law. Thus those rights of exclusively publishing a book or making machines, which are often designated by the common name of authors' dominion. Concerning these things, which daily increase in number, cf. what is to be said about Monopolies.

II. How Things Are Divided. Moreover, some things are movable, which move themselves or can easily be moved from place; others are immovable. But some things are called immovable by their own nature, whether of themselves, as fields, houses, or as adhering to an immovable thing, as such: for example, mirrors inserted into a wall; others are such as assigned to the service or utility, for example, of an estate: thus instruments and animals deputed to cultivating a rural estate are called immovable by their destination.

That division is transferred in several laws to the rights themselves, so that rights which affect an immovable thing are called immovable, and rights which affect a movable thing are called movable.

Wherefore they are called immovable by object of application.

Therefore attention must be given to what the laws have concerning that division, and what jurists pronounce concerning the sense of the laws.

Some things are fungible, others non-fungible. Fungible things are determined by genus; non-fungible things by individual body. Circumstances can effect that the same thing, for the most part fungible, must by accident be treated as non-fungible, and conversely.

Some things are consumptible, which by first use are naturally or civilly (as monies are) consumed: their use is said to consist in abuse. Other things are not consumptible.

Summary

— I. 1. Only things, never persons, can become one's own. Of themselves all things can become one's own: both material and immaterial; both physically existing and beings of reason, of which moral estimation is had, say reputation. But several things are placed outside commerce, at least that of private persons, by positive law, whether ecclesiastical or civil.

Rights also are one's own; indeed, if you except perfect dominion, we possess rights rather than things.

2. Not all things can be the object of perfect dominion. Thus man has only useful dominion of his body and faculties. Reputation can be situated in perfect dominion.
3. Nor can all things subject to possession be possessed by all. Thus private persons are excluded from possessing certain things; and the full useful dominion of faculties and powers cannot be ceded to another.
4. There are things or rights which cannot become one's own without positive law. Thus what is called authors' dominion.

II. Some things are movable, others immovable, either by their own nature, by destination, or by object of application. - Some things are fungible, others non-fungible. - Some are consumptible, others non-consumptible.

Chapter IV: On the Modes of Acquiring Rights in General

I. What They Are. Modes of acquiring rights are the proximate causes of property, whether of a thing or of a right.

II. How many they are. 1. Some modes are original or originary, others derivative. Derivative modes contain formal succession into another's right; while through original modes a thing (or right) is possessed for the first time or quasi-first time. For the first time, when a thing which belonged to no one becomes someone's; quasi-first time, when a thing which was situated in someone's dominion is acquired by another through a title or cause in no way connected with the prior right. Thus by the original mode of usucaption a thing of another is procured.

Succession itself is universal or particular, according as it affects either the whole patrimony or a part of it, or a particular thing.

2. Some modes are natural, which have force from nature itself, as true occupation and donation; others civil, which have force from law, as treasure, and, as most hold, prescription. In another use, as many modes of acquiring as are sanctioned by civil law can be called civil. For the most part the mode of acquiring is of mixed origin, insofar as a natural mode is sanctioned by law, as for example occupation, to which of itself something is lacking. The contract itself is a mixed mode. Since by law you can hold a thing either as quasi-first or as quasi received from another (succession from law), law, for various causes, is numbered among original or derivative titles.

The modes of acquiring are occupation and treasure, accession, prescription, contract, inheritance, testament. To these, as causes of rights, there accede offices and delicts or quasi-delicts.

Summary

General Notions. Modes of acquiring, or proximate causes of property: a) some are original, by which things are possessed for the first or quasi-first time; others derivative, by which one formally succeeds into another's right. Succession is universal if it affects a patrimony or its aliquot part; it is particular if it affects a thing as particular;

b) Some are natural, which have force from nature itself, as true occupation and donation; others civil, which have force from law, as treasure and prescription; although all modes of acquiring, sanctioned by positive law, can be called civil. Most are mixed: thus contracts themselves. Besides these, causes of rights are offices, delicts, and quasi-delicts.

Chapter V: On the Original Modes of Acquiring Rights

Article I: On Occupation and Treasure

§ 1. On Occupation

Order of Discussion. - Having set forth the notion of occupation, we shall treat successively of vacant goods, of animals, of things recently lost, and of things lost in battle or shipwreck.

What Occupation Is. I. Occupation is the apprehension of a thing belonging to no one, with the intention of having it as one's own. An apprehension is required which is suited to show that the thing, according to its nature, is subject to someone's power, or serves him for a use which cannot be common. Such a fact connects an exterior thing with a particular person, so that it appears specially assigned to him; and thus it leads from the abstract right of property to the concrete, after the regime of a stable division of goods has been expressly or tacitly recognized. Occupation is called a primordial fact, or a title which of itself gave origin to private possessions.

II. On Vacant Goods. Can vacant goods be occupied, and how? Goods are understood to be vacant both when they have belonged to no one, and when they have been loosed from the bond to an owner. In this way abandoned movable things and animals are occupied.

But very many modern laws assign vacant immovable goods to the State. Therefore concession must be made to the treasury when it claims those goods for itself. But there is of itself no obligation to manifest these goods to the State; and, so long as the State does not claim them, natural occupation seems by no means impeded.

More severely, however, the moral theologians of Holland more commonly think that, according to the national Code (576), a right of commutative justice is acquired for the treasury in those goods from the beginning, especially in a vacant inheritance. Thus van Gestel, S.J., *De iustitia et lege civili*, LXI, 111-118; Cornelisse, *Compend. theol. mor.*, II, 99; Duynstee, 111, though Marres, *De iustitia*, I, 281, is contrary.

Also notable is the law of several States of North America, by which the goods of foreigners who have died without a testament are equated with vacant goods, so that they can be claimed by the treasury. Yet, if a claim is excluded, it seems lawful for sons or nearer blood-relatives, relying on a natural title everywhere valid among nations, to take those goods for themselves. Nor do they condemn him who, passing over relatives, has assigned those goods not indeed to himself but to the poor or to a pious work. Cf. Kenrick, tr. X, n. 64; Sabetti, n. 381.

The German Code, however, art. 928 compared with art. 190 of the introductory law, has so established that the State can make vacant immovable goods its own; and those goods are acquired for the State through inscription in the registers of immovable things (*Grundbuch*).

III. On Animals. A. From natural law: 1. Animals are distinguished as tame or domestic, to which tamed or domesticated animals are reckoned, and wild, savage, or grown-wild animals. The former, from the very habits which they either commonly have, as if by their nature, or have acquired by

training, show that they are under the dominion of men, even when they have escaped the custody of the owner. The latter either preserve or have recovered a disposition impatient of the yoke.

2. Tame animals have an owner. Therefore, unless they have been abandoned, they cannot be occupied; and one who has freed an animal from fire or another danger must return it to the owner, after receiving compensation for labor and for damage, if there has been any.

Nevertheless it is permitted (by natural law, but not by positive law), by a certain title of defense, to kill, if necessary, birds of small value (pigeons of a dovecote) which, for example, at seed-time or harvest notably cause harm.

3. Tamed animals, and also captured wild animals, do not fall out of ownership (standing by natural law) unless, having become wild or fugitive, they cannot easily be caught, so that a new hunt properly so called is necessary. Therefore neither a pigeon which has merely changed dovecotes (contrary to what many say), nor a lion which, in a town, has escaped the cages in which it was confined, can of itself be occupied. Positive civil law is accustomed to make some enactment concerning pigeons, and, by a certain right of accession, to assign to the owner of a dovecote those which, attracted without fraud, have passed from another dovecote into his own. A similar disposition is sanctioned concerning rabbits and fish which have migrated into another warren or fishpond (art. 462 Italian Civil Code). But beware lest you confuse ordinary pigeons with those special ones which are called "itinerantes" and, marked with the sign of their owner, are often sold for a great price.
4. A swarm of bees, so long as its pursuit is easy, belongs to the owner of the hive from which it has flown out. Afterwards, by natural law, it becomes the property of the first occupant.
5. Wild animals belong to him in whose physical dominion they are and remain. If they are in no one's dominion, they can be occupied by hunting. Nevertheless, there can be violated either the right by which anyone is permitted to exclude others from his land; or the exclusive right of hunting which the owner reserves to himself (Ital. Code art. 712); or the exclusive right of fishing which usually belongs to someone from ownership of the land or from lease. Therefore: a) animals or fish which are kept in an enclosed place in such a way that the individual bodies can be apprehended rather easily cannot be occupied, but belong to the owner of the land or pond; - b) even if the individual animals are not occupied, in conscience and by the law of damages he is bound who, by the quantity of the catch, has made the exclusive right of hunting or fishing worse; - c) and although, even on another's land, a wild animal is acquired by occupation by him who has killed it, or has wounded it or caught it in a snare in such a way that it will not escape from his hands, and fish belong to him who has taken them with hook or net, nevertheless it is readily admitted that the owner of the land, if his possession has been violated, may take the prey for himself by a certain right of compensation.

Nor is the good faith of one said to be disturbed who has carried off fish caught in another's fish-trap, while the fisherman was absent, as though they had not yet been apprehended.

Some recent authors, Cornelisse, II, 69; Duynstee, 142; Prummer, II, 42, 4 (at least when the place is enclosed, though very large), assert an obligation of making restitution to him whose exclusive right

of hunting or fishing has been violated, according to the proportion of the hope which he had of catching those wild animals or those fish which another has occupied. Namely, these authors seem to understand the privilege of hunting or fishing as though the individual bodies already belonged to the privileged person in proportion to the hope, and therefore were occupied, while wild animals are occupied under no respect. But the value of the right of hunting or fishing, which is to be considered here, is estimated from the hope of catching not a definite animal, but indefinitely some animals. The capture of a few bodies by no means changes that value.

Laws concerning hunting and fishing, however, are commonly held to be penal. Yet R. P. Prummer, II, 42, 1, denies that this is today universally true, because it is of interest to the common good that laws of this kind be enacted: we doubt, however, that this reason suffices for the intended conclusion, since even necessary laws can be penal. Moreover the distinguished author, n. 44, permits the confessor to accommodate himself to the accepted persuasions of the place.

B) Positive Laws. 1. Latin law. By the Code of Italy, one may not enter another's land against the owner's will for the exercise of hunting (712); nevertheless this is permitted for pursuing a swarm of bees or tamed animals. But when, after two days, the pursuit of a swarm of bees has ceased, or when tamed animals have not been claimed within 20 days, the swarm can be occupied by the possessor of the land on which it has settled; tamed animals can be kept by those who have caught them (713). Art. 462 provides that pigeons which have migrated into another dovecote, rabbits and fish which have migrated into another warren or fishpond, are, by a certain right of accession, assigned to the owner of the dovecote, warren, or fishpond who has used no art or fraud. The right of hunting and fishing, however, is governed by particular laws. In the Code of France art. 561, the same is established concerning pigeons, rabbits, and fish; and this also holds in Belgium. When pursuit ceases, the French law of 1 April 1889 assigns a swarm of bees to the owner of the land on which it has settled. According to Belgian law (Rural Code art. 14), when pursuit ceases, bees become the property of the first occupant. If no one occupies them, they are assigned to the owner of the land where they have settled, or to him who has leased the land or enjoys its use.

By Spanish law, the same things as in Italian law are provided in art. 613 concerning pigeons, rabbits, and fish; concerning tamed animals and a swarm of bees (art. 613). Entrance upon another's land for pursuing a wild animal, however, is not prohibited; it is also permitted by the Austrian Code (384). - Similar things, though not strictly identical, are established by other Latin laws. By the law of the Argentine republic art. 2577, if hunting is done without the owner's permission on another's enclosed, planted, or cultivated land, the animals belong to the owner of the land, apart from the right of demanding those things by which he may be indemnified. By the Swiss Civil Code (719 and 725), a swarm remains in the ownership of the hive from which it has flown away, unless it has joined itself with a hive already occupied by the bees of another owner.

In the Canadian Code Q., the same must be said concerning pigeons. As regards a swarm of bees, the owner of the hive can pursue the bees even on another's land; but he loses his right if the swarm enters a hive already inhabited. If the owner does not pursue the swarm, another pursuer succeeds him in right. If no one pursues, it becomes the property of the owner of the land on which it has settled, unless the owner of the hive from which the swarm flew away claims the swarm.

2. By the German Code, unless the owner immediately pursues a wild animal which has fled away or a swarm of bees, or if he has ceased from pursuit, these are considered to be without an owner (arts. 960, 961). The owner of the swarm can pursue it on another's land, indeed can draw it out of a hive which it has entered, if that hive was empty; for if it was already occupied by bees, it is assigned to the owner of the hive. If one swarm is made from several swarms, those pursuing become co-owners. - Concerning hunting, fishing, and damages to be paid because of the keeping of wild animals, particular laws are in force (art. 69 ff. of the introductory law).

3. By the law of England, a wild animal is assigned to the owner of the field in which it has been driven out and killed; but if it has been driven out in the field of one man and killed in that of another, the owner of the former field is preferred to the other; and therefore it must be given to him, at least if he claims the animal. (Cf. *Encycl. Brittan.*, art. on Game Laws, 11, p. 440, 11th ed.)

4. By the law of the U.S.A., wild animals, by reason of the soil, belong to the owner of the field in which they are found or are killed. Those which are driven out in the field of one man and killed in that of another belong to the hunter, who nevertheless will have to satisfy each owner (for the field usurped). - Fugitive animals are considered as abandoned, unless the owner pursues them at once. - By the name "estray" is meant a tame animal whose owner is unknown. By occupying it, one obtains a title by which he is preferred to all, except the owner; and from the owner he can seek the expenses of feeding; indeed, certain formalities being observed, the occupant can become the owner simply.

For conscience, it will help to add this. Those civil dispositions, which by their definitions intend to take counsel for peace and concord, can be observed and urged by him whose interest it is. But before anyone has used civil law either peacefully or through a judge, another who by a title of natural law has kept or occupied the animal does not seem to be troubled in conscience. If, for example, someone, observing his pigeons which have entered another dovecote, has taken them back by pursuing them before the owner of the dovecote could have the intention of an owner toward those pigeons, what will prevent him from considering his pigeons as never lost?

On Things Recently Lost. A) From natural law. Things recently lost are not abandoned, and therefore cannot be occupied so long as hope shines forth of discovering the owner. Thus, by the law of nature, the finder must, from charity, gather up the thing where he can do so without notable inconvenience; afterwards, also from justice, care for the same thing, insofar as he is forbidden to make the owner's condition worse by his action. For by gathering up the thing, he has begun to manage the owner's affair, which another who found the thing is presumed would have done.

Nor does justice permit that you put the thing back where you found it, unless this be done without detriment to the owner. But a thing which cannot be preserved in its own species must be sold, so that thereafter the price may be given to the owner. Besides, from justice or from charity alone, according as otherwise he would make the owner's condition worse or not worse, he must use prudent diligence proportioned to the importance of the thing for finding the owner: for example, by notices in newspapers or by manifestation of the thing made to the competent official or office. From

equity he can seek some remuneration; and if it has been promised, the owner must pay it together with the expenses of the managed affair.

If no hope remains that the owner will be found, his right has perished, so that the thing can be occupied. Some, however, answer more severely. And he is to be praised who gives the thing to the poor. One who has prudently judged that the thing cannot be recovered already becomes at least a possessor in good faith, who is permitted to enjoy the privileges of this. Cf. below.

B) Positive Laws. 1. Latin law. From the civil law of Italy, the finder must return the thing to the owner; if he does not know him, he must deposit it with the syndic (or municipal rector) of the place of finding. That magistrate must publish the deposit on two successive Sundays. Then, when two years have passed, the thing is assigned to the finder. The owner, however, must give the finder as a reward a tenth part of the value, up to two thousand lire, and a twentieth part of the sum or value exceeding two thousand lire (arts. 715-718). Better, as it seems to us, the Portuguese Code (413-421) indeed commands notification to the public authority, but permits the thing to be held by the finder, who, according to the varying value of the thing, after 45 days, after three months, after six months, or after a year, will be able to consider himself the owner, yet, in the last case, with a third part assigned to a definite work of beneficence. One can use these benefits of civil law, provided that he has complied with its conditions. But in French law, from art. 2279, the owner has for 30 years a personal action against the finder and his universal successors; and for 3 years a real action against another possessor in good faith. Many special laws concerning various cases must also be observed. Cf. Colin and Capitant, I, 853-856.

The Austrian Code (389-392) assigns a reward to the finder who has manifested the find in the prescribed manner; indeed, after a year, it assigns the thing itself, yet in such a way that, if the owner appears within the time required for prescription, he must restore to him that by which he has been made richer.

The Code of Spain, art. 265 ff., has things similar to Italian law; the Code of Holland has things similar to French law.

In the reward which is to be given to the finder, in the person to whom the found thing must be consigned, and in the assignment of the thing when there is no hope of finding the owner, the laws of Latin America vary. Thus the law of the Argentine republic (article 2569), after six months from the last notice given concerning the found thing, assigns the thing to the municipality, but to the finder only the reward; which he can also seek from the known owner to whom he returns it. The Brazilian Code (603-606) assigns a reward to the finder, but the thing to the State.

By Swiss law also, a found thing, if it exceeds 10 francs, must be reported to the municipal government; or handed over to the owner or administrator of the house or public building in which it is found. When these prescriptions have been fulfilled, the right to an equitable reward, indeed, after five years, to the thing itself, is acquired.

2. By German law, the finder must inform the owner or the one having right about the found thing; if he does not know them, he must make the public custodians themselves certain, unless the thing does not exceed three marks in value. From that notification given, or, if the thing does not exceed three marks, from the finding itself, a year runs, after which, if it has

elapsed in vain, the finder can consider himself owner. Yet those who afterwards demonstrate their right can seek from the finder restitution of the thing which he is then considered to have had without cause. The finder has a right to a reward. The prescriptions of positive law being observed, the finder can use and enjoy its benefits.

3. The laws of England establish nothing special concerning these things.
4. In the U.S.A. provision is made variously by the statutes of the States; but the finder has no right to a reward, unless something has been promised, nor does he obtain title of ownership from that finding.

Things Lost in Battle or Shipwreck. are not abandoned, but are to be returned to their true owner who is known or is discovered. And plunderers of soldiers killed in battle are punished with grave penalties. But things which belong to a hostile army should not be returned to the enemy by citizens whose cause is just, but to their own republic which has claimed them. For they have a certain owner.

Except the right of equitable compensation which a private person, injured unjustly and harmfully by some State, can exercise upon the goods of that State. R. P. Prummer, II, 47, reports that he treated at length of booty taken in war in *Linzer Qtft*. 1918.

Special laws are accustomed to establish what must be done with things found after shipwreck in the sea or on the seashore. Attention must be given to the way in which those laws are commonly judged to bind conscience. Severely, in Holland, Duynstee, n. 145, condemns as theft the one who has kept as his own things lost by shipwreck. By similar positive English law, things found from shipwreck must be handed over to the official (*receiver of the district*) who, unless the owner appears within a year, sells them and gives the price to the treasury. Yet if they are not positively claimed, R. P. Slater, *Manual of Moral Theology*, I, 371, judges that one can stand by natural law.

But by natural law these things are to be treated as things recently lost.

§ 2. On Treasure

I. Notion. Treasure, to describe it by notes common to various laws, is a movable thing, hidden or buried, which no one can prove to be his own. Therefore coal veins or gold mines by no means have the character of treasure. But this definition must be completed differently according to different laws.

Thus, in Roman law, by which treasure was described as "a certain old deposit of money, of which no memory exists, so that it now has no owner" (L. *Numquam*, § 1, Dig. *De acquirendo rerum dominio*. 31, XLI, 1), it was required that the thing had been hidden from antiquity and on purpose. But today regard is had neither to antiquity nor to the reason why it lies hidden (Cf. e.g. Pacifici-Mazzoni, III, 1, n. 121; Colin & Capitant, I, 851; Prummer, II, 45).

Furthermore, several laws require that the thing be precious, while others do not consider the price of the thing; but the law of England and of the U.S.A. has only coins as the object of treasure. Whether it be hidden in a field, a house, or in a chest, coffer, or movable thing, this for the most part does not matter. Yet in Holland, because of art. 642 of the Civil Code, they doubt whether the things established concerning treasure fall upon things discovered in a movable thing; and the opinion denying this is gaining more strength (Cf. Cornelisse, II, 70; Duynstee, 146). Finally, more recent

laws, for example the Swiss and Mexican laws, distinguish from other treasures things which have artistic or scientific value, and are accustomed to assign these to the State.

By natural law, such a thing would belong to the first occupant, that is, to him who has apprehended it with the intention of an owner. For it is in no way a fruit of the field; nor is it acquired at the same time by the buyer of the house or field, unless perhaps by Swiss law, by which treasure is assigned to the owner of the land as something accessory. Therefore there seems to be no need for a special law by which its acquisition is governed. Yet by a secular tradition, proceeding from Roman law, a special legal regime is introduced, and one sufficiently arbitrary, if you except North America and England, where the older law assigns treasure to the occupant, the more recent law to the State, and practice to the occupant.

II. Positive Laws. 1. Latin law. By Italian law, treasure is assigned to the owner of the land where it is discovered. Yet if someone by chance has discovered treasure on another's land, one half is assigned to the owner of the land [1], and one half to the finder (art. 714).

Moreover this should be carefully noted. The finder is not the one who has apprehended the treasure, but is understood to be the one who has made it visible, even if he has not first noticed or occupied it. This disposition, according to the most common opinion, binds conscience.

Yet they permit the finder who has deliberately sought the thing to retain, before the sentence of the judge, the half part, of which, as they think, he is not deprived except as a penalty. But that solution seems rather little in agreement, at least with the way in which the law of Italy has been written. And thus theologians introduce a certain positive law of which they themselves are the authors. Therefore Prummer, II, 46, 2, doubts the very probability of this exception.

In Italy one must also attend to the special law of 12 July 1902 concerning things which possess artistic or archeological value (Cf. Brugi, *Intituzioni*, p. 317). With Italian law, in sum, there agree the laws of Belgium, France, Latin America, and the Canadian dominion Q. Portuguese law assigns two thirds to the owner of the land; the law of Bolivia assigns a sixth part to the treasury.

2. German law, all other distinction being suppressed, art. 985 divides ownership between the finder and the owner of the thing in which the hidden thing is, but requires that possession of the thing be taken (984).

3. By English law, according to the Common Law, treasure, *treasure trove*, belonged to the occupant; but by the statute of 1 Edward I, confirmed by the Coroner's Act 1887, it must be consigned to the treasury; but if the treasury does not claim the treasure, the occupant can acquire the treasure for himself. Thus the theologians. Practically, it is treated as a thing recently lost.

4. In the U.S.A. the same law as in England is in force.

[1] But not of itself to him who has the right of usufruct. Rather, something else seems to have to be said of the emphyteuta, since he possesses the fuller utility of the field. But positive laws must be attended to. Thus the Mexican Code (759-770), by special rules, arranges the right of the owner of the land with the usufructuary and the emphyteuta.

III. On the Obligation of Conscience. What moral theologians who explain Latin or German law think, we have already said above. They also admit that treasure found in public land, or in land

destined for public uses, yields entirely to the finder, that is, to him "who by himself or through workers makes it visible" (Arregui, n. 295). But how theologians can efficaciously establish this last point, since they are destitute of foundation in both natural and positive law, entirely escapes us. Therefore the laws themselves seem to be arbitrary [1]; arbitrary is their application to cases of conscience, made by theologians. And since an equitable solution is supplied by natural law, we would not think that he is to be disturbed who, apart from the sentence of a judge, has occupied the treasure by true apprehension: which all concede in the U.S.A. and in England.

Corollaries. 1. As most admit, he who knows that treasure is hidden in a field can buy the field at the common price, since, by its nature, the treasure is by no means a fruit of the field, nor is it of itself occupied at the same time with the field.

2. If a precious thing has been made visible by a storm, it already loses the character of treasure and will belong to the first occupant.

[1] Although the Penal Code of Italy art. 420, 2, when it punishes one who takes for himself what by law was assigned to the owner of the thing, nevertheless does not accuse him of theft, but of "undue appropriation."

Article III: On Accession

I. Notions. 1. Accession is a certain increase of one's own thing, arising from the fact that another thing, not one's own, is joined to it, accedes to it (Cf. Ital. Code art. 443). - When that joining extends ownership, accession becomes a mode of acquiring, which nevertheless is easily reduced to occupation. This, however, happens both by nature and by positive law.

This acquisition is governed by a twofold principle: "a thing bears fruit for its owner"; that is, what a thing produces is of itself possessed together with the thing itself; and "the accessory follows the principal." The former principle is demonstrated by the law of nature itself, at least when no labor of another or thing of another has cooperated in the fructification, or, if there has been some cooperation, this has been compensated by a price; but the other principle rather supplies a reason for positive sanctions of laws. For of itself, the conjunction of an accessory thing with the principal would induce a certain co-ownership.

2. Accession, however, is distinguished as accession common to movable and immovable things; accession proper to movables; and accession which has place only in immovable things.

a) Accession common to movable and immovable things occurs by birth. "A thing bears fruit for the owner" of the fruit-bearing thing. The offspring of an animal belongs to the possessor of the one giving birth (and therefore of the female): "the offspring follows the womb." Likewise the fruits which nature alone, or the industry of men, or both causes together have produced, for example the fruits of a field, of a tree, etc., are assigned to the owner.

b) Accession proper to movables occurs either by simple joining, as when a gem is inserted into a necklace; or by specification, when the juridical species of a thing is changed, with some industry presupposed, as when a statue is made from marble; or by commixture (which is called confusion when liquids are in question), when several things are mixed in such a way that whose bodies are whose can no longer be discerned: as if two stores of wheat, or two wines, are mixed.

If these things have been done by common consent, attention must be given to the contract. Otherwise, they are governed by equity, which laws attempt to interpret for various cases, using this principle: "accession yields to the principal" (L. 19, § 13, 1). *De auro, argento*, XXXIV, 2).

c) Accession proper to immovables occurs by alluvion or by reliction, when waters either, little by little and imperceptibly, bring a hidden increase to a field; or recede gradually; or by an island formed (in the middle of the riverbed); or by a changed bed of a river; or by building, when a building is constructed with another's material, or is placed on another's soil; or by planting, when someone has planted certain things in another's ownership. Here too this holds: "It is fitting that the accessory follow the nature of the principal" (Reg. 42 Iur. in 6). But jurists must be approached.

d) But metallic veins, quarries, and sand-pits are governed by special laws for the common good. Nothing strictly prevents the State from claiming for itself the monopoly of exploiting them; but that this will yield to the common utility is rightly doubted. Similar things can be established concerning certain springs, for example petroleum-bearing ones, which begin to flow in some field.

R. P. Slater, p. 375, gives these examples of accession. The owner of a field acquires increases effected by alluvion; an island which appears in a river belongs to the owner of the riverbed. But if a river suddenly changes its bed, ownerships remain intact.

One who has built a house with another's wood acquires the wood, but must indemnify the owner. A painter becomes the owner of the canvas on which he has exercised his art, but he will have to repay the price of the canvas. By the introduction of a new form, as if you make bread, wine, or oil, the ownership of the thing effected will belong to the artisan, who will have to pay the price of the material. If liquid or solid things of several owners have been mixed, of themselves they must be separated; if this cannot be done, each obtains a right in the price of the thing in proportion.

5. You ask whether possession of the soil of itself grants a right to the things which are above or below? This is by no means effected by natural law; for by the same limits by which the kind of occupation is circumscribed, the very right of property itself is circumscribed.

But it happens that positive laws, for example the Italian Code art. 440; French art. 552, assign also the things which are above and below (*le trefonds*) to him who possesses the soil.

Positive Laws. 1. Concerning Latin law, after what has been said, nothing in particular is to be observed.

By Canadian law Q., for a sudden change of riverbed, rivers which are not in the ownership of private persons (those which can serve ships or the transporting of logs: *flottables et navigables*) are distinguished from others. In the former case, the abandoned riverbed belongs to the State; in the latter, to those who possess the fields invaded by the river. - Nor does the bad faith of the one effecting accession impede the transfer of ownership.

2. By German law these things are established. Fruits and things which are part of a thing belong to the owner of that thing even after separation (art. 953). Movable things which become one thing with an immovable thing in such a way that they are essential to it yield to the owner of the immovable thing. By the union of several movable things, co-ownership of several persons is effected, unless one thing is more principal. One who by his labor has introduced a new

juridical species acquires the thing, unless the material was much more precious. But when the right of perfect ownership is extinguished, other rights in the thing are at the same time extinguished. But those who have been injured can demand compensation. Concerning alluvion, an island, etc., the various laws of the States must be consulted.

3. Concerning the law of England, observe this: by more recent statutes, which confirm the older custom, compensation for useful expenses is owed to him who withdraws from a house or field.

4. In the U.S.A., artificial accession does not change rights if it has been carried out without good faith. Moreover, the whole thing confused or commixed is assigned to him toward whom the one mixing was injurious. But before the sentence of a judge, one can stand by natural law. Cf. Garepy, n. 1506.

Concerning the obligation of conscience it will be enough to advise this: those laws, insofar as they at least supply the silence of natural law, or are applied by the sentence of a judge to the juridical relations of the parties, bind conscience.

Article IV: Prescription

§ 1. What It Is, How Manifold It Is, What It Effects

I. What It Is. Prescription is an original mode, established by positive law, of acquiring a real right or of destroying an obligation or action, after a certain interval of time has elapsed, and with the other prescriptions of the law observed (Cf. art. 2105 Italian Code). - Positive law is canonical when ecclesiastical goods are in question; but, with certain points saved, this canonizes the civil laws of the various nations (c. 1508).

II. How manifold it is. Taken generically, it has two species: acquisitive prescription, which is more strictly called usucaption; and liberative prescription, which is more properly called prescription.

III. What it effects. 1. Acquisitive prescription (the usucaption of Roman law) at the same time confers an action for pursuing the thing, and an exception for repelling an adversary.

Liberative prescription confers an exception by which someone, at least if he wishes, can render the creditor's action entirely void. At least if he wishes, I say, because laws for the most part provide that unless it is opposed, the judge cannot attend to that means of forensic defense.

But observe that property or perfect ownership is not lost by mere liberative prescription or by non-use: one who does not use his own thing remains its owner at least in the external forum, until either the treasury assigns it to itself as vacant, or someone occupies it.

2. By acquisitive prescription, the law intends to give a means of obtaining a right which is inviolable at least in the external forum. But it can grant liberative prescription with a twofold intention: either of extinguishing the creditor's right itself, or merely of destroying his action. And certainly it does not intend to extinguish the right, if it permits the creditor to defer to the debtor an oath before the judge concerning the payment having been made, and if this is denied, the debtor is condemned to payment.

3. Each prescription acts backward, insofar as, after prescription has been completed, the one prescribing is considered to have been owner of the thing, or immune from the obligation, from the day on which he began to prescribe, so that from then on he owes neither fruits nor interest or usury.

§ 2. What Positive Laws Establish

I. Sketch of the Positive Regime. 1. Conditions of usucaption properly so called. The condition common to every usucaption is juridical possession, for the required time, continuous or uninterrupted, and not vicious (peaceful and public), of a prescriptible thing.

Juridical possession presupposes, at least in most laws [1], the intention of an owner; but this is presumed, unless it is proved that possession was begun with another intention. And today, when an immovable thing is in question, that possession will scarcely be had unless someone has been inscribed in the public registers as having the right.

That it be continuous, it is necessary that the possessor, according to the nature of the thing, has constantly used the right. Possession is interrupted naturally if, through the time established by law, for example beyond a year, the possessor has lost use; civilly, by a suit moved, by acknowledgment of another's right, etc. That it be not vicious, it must be peaceful: prescription is not begun against him who has suffered violence from the possessor, unless this has ceased; and it must be public: of itself it must have been able to be known by the true owner. These conditions must be certainly established.

A prescriptible thing is generally every thing of which there is commerce and private possession.

2. For certain usucaptions there is required besides a just title and good faith. A just title is a cause apt of itself for transferring a right (donation, for example), although because of a hidden defect it has not transferred the right. This title is called colored. Leasing would not be a just title, nor a merely declarative sentence, nor an act deprived of essential form or substantially null. And when it is required, it must truly be present: a putative title does not suffice. - Good faith here is "a just opinion of ownership acquired." Just, although involuntarily erroneous.

Worthy of special mention is the immediate acquisition of a movable thing which is defined by body, through the very possession in good faith, which many laws sanction, as will be explained.

3. Conditions of liberative prescription. Here no possession is necessary. But there is required an action or a prescriptible right, or one which can be extinguished; and, in the one having the right, a cessation from the use of the right or from pursuing the forensic cause, and this without interruption, for the time established by law. Sometimes there is added, in the one prescribing, the condition of good faith, which here will be a persuasion by which someone thinks that he is not a debtor, or is held by no positive obligation. Yet there are those who also introduce negative good faith, which consists in this, that someone, though conscious of his obligation, waits for the action of his creditor, which he impedes by no fraud or force.

3. On the condition common to each prescription, or on time. Time is computed not by hours, but from day to day, and generally in such a way that the first day is neglected, and the time is considered elapsed when the last day is completed. Therefore, if someone must pay a debt on

17 January, prescription will begin to run from 18 January, and a five-year prescription will be perfected when 18 January has been completed.

Prescription is said to sleep or to be suspended during a time which cannot be computed toward prescription, although the space elapsed before can be added to the useful future space. Thus, in several laws, minors by age have a general (not universal) benefit, so that prescription does not run against them.

4. To whom the benefit belongs. Not only the debtor, but also creditors and others whose interest it is, can oppose prescription on behalf of a negligent debtor. And if some buyer is disturbed in his possession of the thing acquired, he can call the seller into court, and not rarely, prudence advising, he will have to call him, so that the seller may be able to employ juridical means of impeding eviction.

One who, ignorant of the right of prescription, has paid a debt, can by some laws (for example those of France), though not by all (not those of Germany or Switzerland), recover what was paid even by judicial process.

5. Besides, attention must be given to the joining of possessions, which exists in various laws, sometimes free and sometimes obligatory. That is, one who succeeds someone can sometimes, and sometimes must, continue the possession of the author or predecessor, unless he prefers to repudiate the thing. He can, or he has the option of continuing the possession or of beginning a new one, if he succeeds by a particular title: for example, as buyer or particular legatee; but necessarily (at least in several laws) a successor by universal title continues the prior possession, because he, contrary to the former, shares the burdens of the patrimony of which he obtains a proportional part, together with the advantages. The importance of the option is this, that a new possession, unlike the continued possession of another, will not be infected with the defects of that other's possession.

[1] For by the Code of Germany possession is defined solely by physical power of ownership, which nevertheless one does not exercise in another's name (Cf. arts. 354, 855).

II. Various Positive Laws. 1. Canonical regime. After the general canon 1508 by which civil law is canonized, the Code reserves these things: 1. for every prescription, even liberative prescription, it requires good faith which has lasted through the whole time required for prescription (can. 1512); - 2. immovable things, precious things, rights and actions, whether personal or real, which pertain to the Apostolic See are prescribed by the space of one hundred years; but those which pertain to another ecclesiastical moral person, by the space of thirty years (c. 1511). Thus from the common law. But privileges are not revoked by which the goods of Mendicants are not acquired by usucaption except through 60 or perhaps even 100 years. On the contrary, peaceful possession and possession in good faith, for three years, of a benefice with even an invalid title, provided simony is absent, assigns the benefice to the cleric possessing it (c. 1416); - 3. sacred things which are not in the ownership of private persons cannot be prescribed by a private person, but only by an ecclesiastical moral person against another ecclesiastical moral person (c. 1510, §2). We think a non-ecclesiastical moral person is to be assimilated to a private person; - 4. subject to no prescription are: "1. Those things which are of divine right, whether natural or positive; 2. those things which can be obtained only from apostolic

privilege; 3. spiritual rights, of which laymen are not capable, if prescription in favor of laymen is in question; 4. the certain and indubitable boundaries of ecclesiastical provinces, dioceses, parishes, apostolic vicariates, apostolic prefectures, abbeys or prelatures 'nullius'; 5. alms and burdens of Masses; 6. an ecclesiastical benefice without title; 7. the right of visitation and obedience, so that subjects could be visited by no Prelate and already be subject to no Prelate; 8. payment of the cathedraticum (c. 1509); 9. interruption of prescription is governed by civil law" (c. 1508. 1725, 4).

Actions concerning the status of persons are never extinguished (c. 1701). And concerning actions cf. cc. 1702-1705, 2240.

2. Civil regime. Latin regime. a) By the law of Belgium, France, and Italy, for every usucaption and for every prescription a space of thirty years suffices. And no title, no good faith is required (art. 2135 Italian Code; 2262 French Code). Therefore even the creditor of an annual payment which must remain for more than 30 years, lest he fall from his right, must after 28 years procure for himself a new title or document, at the expense of the debtor (art. 2136 Italian Code). Note that only continuous and apparent servitudes can be acquired by usucaption.

b) With good faith and a just title acceding, immovable things or the usufruct of them are acquired by usucaption of ten years (art. 2137 Italian Code; in French law, the years during which the owner has not lived in the territory of the appellate court where the immovable thing is situated must be doubled). Good faith at the beginning of possession alone is attended to.

c) Concerning movable things, no other usucaption exists in civil law. But as regards individual movable things (not a universality of movable things, as for example an inheritance consisting of movable things) and anonymous titles (*ai portatore*), possession itself, in relations with third persons, produces the same effects as a true title (art. 707 Italian Code; 2279 French Code). Thus Titius sells and hands over to Caius a watch already sold to Sempronius. Caius is supposed to be in good faith. He can keep the watch and oppose his possession to Sempronius when he claims it. The Italian Code wisely added to the French Code the words "in relations with third persons." Between him who holds the thing and him from whom he has it, the solution varies according to the case. Thus Titius erroneously pays something to Caius, who receives it in good faith. Once the error has been demonstrated, Caius will have to return the payment to Titius.

From this rule are excepted things lost by chance or taken by theft: the owner can reclaim these from the possessor for two years (for three years in the French Code); but the possessor can proceed for damages against him from whom he had the thing. Yet if the lost or stolen thing was bought in markets, or in a sale by auction, or from a merchant who publicly is accustomed to sell that kind of thing, the owner cannot recover his thing unless the price which the possessor paid has been refunded (arts. 707-709, 2146 Italian Code).

The German Code expresses a similar right in this way: by consent to the transfer of ownership and by handing over of the thing, the acquirer becomes owner even if the thing did not belong to the transferor, provided he receives the thing in good faith (art. 932).

d) The fruits of a thing possessed (to speak of a connected matter) are acquired in good faith, by the very perception or separation. But here good faith seems necessary for each perception. Suppose Titius, who has begun possession of a field, from which after five years he is deprived by the true

owner. He can keep the fruits truly perceived, provided he was in good faith in each year. The jurists of France urge, more than the Italians, the necessity of true perception when civil fruits are in question. Therefore, if he neglected to seek the price of the rented house, in France the whole price will have to be paid to the true owner, while in Italy the part which he could have perceived will be assigned to him.

e) Finally, concerning the joining of possessions, what has just been said, n. 401, 5, holds.

f) As regards liberative prescription, besides the thirty-year prescription, by prescription of five years all pensions owed for perpetual or life annuities, annual alimentary pensions, annual prices to be paid by the tenant of a field or house, "interests" or interest on loaned money, and whatever is to be paid after individual years or shorter periodic terms are extinguished. And this prescription of five years is privileged, so that it runs even against soldiers in war, against minors by age and interdicted persons (arts. 2141-2155 Italian Code). By the Italian Code, art. 1300, actions concerning nullity or rescission of contract are prescribed in five years; by art. 1301 of the French Code, in ten years. - There are besides several shorter prescriptions, broadly so called, of six months, one year, three years, by which not indeed the right but the action is destroyed for seeking especially various wages or prices of merchandise or lodging (arts. 2138-2143 Italian Code). - Nor are special prescriptions lacking.

The Netherlands, Spain, Portugal, and Latin America use an entirely similar law. It will be enough to observe these few things. By the Austrian Code, immovables, possessed in good faith with inscription in the public registers, are acquired by usucaption in three years (1167). In Spain, for usucaption of immovable things through ten or twenty years with title and good faith, at least initial, he is understood to be absent who lives outside the region in another nation or beyond the Ocean; while elsewhere, for example in the Argentine republic, one is said to be absent who is outside the province; but the law of Canada Q., Switzerland, Mexico, Holland, Costa Rica, Guatemala, and Portugal do not attend to the absence of the owner. Indeed Guatemala grants prescription after five years, Switzerland after ten years (if inscription in the public registers has acceded), while Portugal requires fifteen years, Holland twenty years. Austrian law (1160, 1163, 1197); Brazilian law (551); Swiss law (661 Civil Code), and Spanish law (1310) require good faith through the whole time.

A movable thing is acquired by usucaption by Austrian law (1166), Spanish law (1955), with good faith in three years, by Swiss law (718 Civil Code) in five years. Without good faith, from possession alone, it is prescribed by Spanish law (1955) in six years; but by Portuguese and Mexican law in ten years; by the law of Ecuador, Chile, Nicaragua, Colombia, Uruguay, in thirty years, and by Peruvian law in forty years. By Brazilian law movable things are acquired by usucaption by possession of three years with just title and good faith; without these, in ten years (art. 118). - Active, continuous, and apparent servitudes (other servitudes cannot be acquired by usucaption) are acquired by usucaption in 20 years in Latin America and Spain; or in ten years in Costa Rica and the Mexican republic; in 30 years in the republics of Ecuador, Bolivia, Chile, Nicaragua, Colombia, Uruguay. Several laws, for example Spanish law (161), admit the immediate acquisition of a movable thing through possession in good faith.

Liberative prescription is established as 30 years, yet in such a way that annual payments, or payments to be made more often, are prescribed in 5 years.

Even in a shorter time the honoraria of physicians and debts of this kind are prescribed.

In liberative prescription, we have found only the Portuguese Code which (535), in order that the debtor be freed after 20 years, requires good faith understood in such a way that at the end of the necessary time he has been ignorant of the obligation. Without good faith, the extinction of the obligation itself after thirty years is established as a general rule, which does not exclude shorter prescriptions. But the Austrian Code (1479 ff.) sometimes speaks of prescription of an action, sometimes of prescription of a right. Cf. especially § 1480, by which actions for rents, interest, and annual debts are prescribed in three years; but the right is prescribed in thirty years. The general rule, however, is prescription of thirty years, and against privileged persons, of forty years. But the Codes of Brazil and Spain speak only of prescription of actions. Therefore one must see to what interpretation those laws are subject. By Swiss law (127 Civil Code), saving a special disposition, all actions are prescribed in ten years.

The Code of Spain seems to ignore suspension of prescription because of the incapacity of the one having the right; but it grants to persons who do not administer their own goods an action against those who by their negligence were the cause of the prescription which, as representatives of the incapable, they ought to have impeded (art. 1930). By the Code of Austria (1494) no prescription against incapable persons is completed except after two years from the incapacity being removed. - The bad faith of a predecessor does not harm in the laws of Latin America, if you except the Argentine republic and Bolivia.

The Code of Germany itself admits a universal acquisitive prescription of immovable things after thirty years from inscription in the land register (*Grundbuch*); with good faith which has remained through the whole time, movables are acquired by usucaption by possession of ten years. In liberative prescription it distinguishes prescription of the right itself in the thing, which supposes usucaption by another; prescription of only the use of the thing, which is to be observed only in relation to someone, for example of a buyer who in good faith has received a book already sold to another, while it permits the right to remain intact with respect to others; and prescription of only the action. The time is thirty years in general, but four years if interest, the price of rent, etc., is in question; and a shorter time for debts which are to be paid to physicians, merchants, etc.

Nor, even for shorter prescriptions, is it lawful for the creditor to defer an oath to the debtor who opposes prescription. Nor is that law, which many think intends to extinguish the right itself, held to be unjust. Cf. Prummer, II, 61. - Prescription is not fully suspended in favor of minors or incapable persons except between parents or tutors, and children or pupils; but incapable persons can, for a space of six months after obtaining capacity, impede prescription (art. 206).

By English law there is no prescription of movable things. From Act 1871, ownership of an immovable thing is acquired by usucaption of 12 years. Various rights in a thing are prescribed in 20 or 10 years. While the one having the right is incapable or impeded, prescription which does not require a time beyond thirty years is suspended. We are warned by R. P. Slater (*A Manual*, p. 38) that the law of England is thorny, so that a confessor not specially versed in law cannot prudently solve these questions.

In the U.S.A. usucaption and prescription are subject to various laws. Generally, for acquisitive prescription, possession of ten or twenty years is required, sometimes with good faith, sometimes with a colored title.

Actions for recovering lands are not prescribed except in 10 or 20 years; while actions from unwritten contracts or from accounts of merchants, physicians, etc., are prescribed in 1 or 2 years.

§ 3. What Force Prescription Has in the Forum of Conscience

I. Principles. 1. The law of prescriptions is founded on reasons of the common good which non-Christian and Christian authorities have approved. The reason, besides the special utilities of certain prescriptions, is principally this: lest goods and rights remain uncertain; lest, after a long time, during which documents and proofs easily perish, possessors of goods and debtors be exposed to vexations which are for the most part unjust. St. Thomas, *Qdl.* 12, art. 24, also adds the reason of a certain punishment of the negligent owner or creditor. For more, cf. *Quaestiones de iustitia*, n. 268. Wherefore, without doubt, these laws can transfer ownership and extinguish obligations even in the forum of conscience.

2. But in order that prescription operate in conscience, it is necessary: a) that the law itself have wished not merely to extinguish the action of the external forum, but truly to change rights or obligations; b) that its conditions have been fully fulfilled; c) that it should not seem to bestow any reward upon fraud and sin: for such a law would be unjust.

II. Corollaries. 1. Opinions. Most authors, especially in usucaption, require, in a universal manner, the canonical good faith which, for prescribing ecclesiastical rights and goods, is necessary from can. 1512. And they are accustomed to allege the chapter of the Lateran Council (c. "Quoniam," title *De Praescript.*, II, 26), by which, however, this one thing is strictly defined: that the initial good faith with which Roman law and also more than one modern civil law are content does not suffice. This we also deny. Yet those writers temper their severity when there is question of a servitude of suffering something: one who is bound only to suffer that another do something, for example that he pass through, can prescribe against the one having the right, if he does not exercise his right and the conditions of the law are fulfilled. Many also are content with good faith which they call theological, which consists in this, that the one prescribing has not illicitly retained another's thing, or has not been in delay in fulfilling the obligation about whose prescription there is question. In this matter they can rely on the authority of Molina, d. 66, n. 10; Pichler, *In ius canonicum*, L. 2, tit. 26, n. 32, 33; LeGonis, *Iust.*, d. 7, n. 18.

Some go further in liberative prescription. That is, in order that the right which the civil law intends to extinguish may truly be extinguished for conscience, "it seems to suffice" (thus, for example, Prummer, II, 62) "that there be negative good faith, or absence of fraud; i.e., prescription is valid if the debtor has done nothing illicit so that the creditor could not vindicate his right." This is not repudiated by Noldin, II, 107, although he, in this matter, seems to speak rather confusedly and with little coherence (cf. n. 106). More clearly Slater, *De iustitia et iure*, n. 13: "Good faith in liberative prescription consists in this, that no impediment is placed whereby the other is prevented from being able to use his right."

Indeed, even in acquisitive prescription, when there is question of the joining of possessions, not a few permit that the successor, by universal title, of a predecessor in bad faith, if he himself has existed in good faith, can choose not to continue the possession of the author, or at least can begin and complete a possession of thirty years; for by this prescription all debts are extinguished, and

hence also the obligation of answering concerning the bad faith of the author. But that explanation is juridically defective when the laws themselves require no good faith. For by civil prescription only civil obligations are extinguished. But there is no civil obligation of answering concerning the bad faith of the author when civil law does not demand good faith in the one prescribing.

Nor do we think it less foreign to law to require of him who wishes to enjoy in conscience the thirty-year usucaption of French law, that, after bad faith has been removed, possession of the movable or immovable thing have been continued for thirty years. For this, juridically, is to introduce a prescription of more than thirty years, since to the thirty years there would have to be added years, varying in number, during which the thing had been possessed in bad faith: that is sanctioned by no French civil law; yet we are dealing with an institution which draws its efficacy from positive law.

2. Therefore, to set forth, with reverence for the authorities preserved, our opinion, which we have proposed for several years now, for example in *Quaest. de iustitia*, n. 267-276, we proceed from this beginning: in an institution of positive law such as prescription, one must not depart from positive law unless, by the clear iniquity of the disposition or of the practical consequence, we are compelled to depart from it.

Hence these things concerning liberative and acquisitive prescription seem to us to be gathered.

Concerning liberative prescription. a) One who, before prescription has been completed, is conscious, or becomes conscious, of the obligation of paying the debt, cannot of itself use the benefit of the law in conscience. But one who in good faith has completed prescription does not have to examine the antecedent faith, for example of his author, in order that he may be able to oppose the exception of prescription. Therefore the disposition of the Portuguese Code, art. 535, is valid in conscience and is of itself to be approved, since it wishes debts of him who, when the time is completed, is in good faith, to be prescribed in twenty years. For prescription of this sort does not favor iniquity.

b) Even one conscious of the debt will be able to think himself freed: if, by force of law or agreement, he did not have to pay unless asked. To this belongs the case in which either a merchant or a physician has omitted to send the usual written account of the debt (*conto, fattura*) (Prummer, II, 62). The same seems to be said if, for the confirming of peace and security or for arousing diligence, the law regards as renouncing his right the creditor who, through a definite time, has not demanded execution of the debt; and the law does not admit contrary proof.

c) One who merely must tolerate that another do something (thus the possessor of a field burdened by a passive servitude) can oppose the prescription of civil law, if the one having the right has omitted to use his right for the time necessary for prescription. (Not every law, however, is content with this condition.)

When a reason of the common good, independent of good faith, founds the law of prescriptions, that law, without consideration of good faith, can be valid in conscience. Now the five-year prescription of interest, etc., rests on this common reason: of preventing the creditor who has omitted to seek his annual credits from oppressing the debtor by a cumulative exaction of many years. This reason is detached from every respect of good faith. Wherefore we do not see how you would strictly oblige a debtor who merely (having used no positive fraud) neglected to pay annual pensions or interest, to restore those things which have been prescribed by civil law.

But counsel to be given seems to have to be estimated from the circumstances, which sometimes favor the creditor, sometimes the debtor. Moreover, it has been received by usage that banking or industrial societies, which are accustomed to pay interest to those exhibiting certificates (coupons), and not spontaneously, protect themselves by five-year prescription: and no one disapproves this.

In order that someone may be able to use in conscience an entirely brief prescription, of one year, six months, and the like, he must first be made more certain about the intention of the legislator to destroy the right itself and not only the action.

2. Concerning acquisitive prescription. a) A possessor in good faith can with a safe conscience keep the fruits perceived in good faith, which the law assigns to him. Cf. our *Quaestiones de iustitia*, n. 284. Thus already many, against Ballerini, *Opus theol.* III, 423.

b) Nor is he less secure in conscience who, relying on positive law, preserves a movable thing received in good faith, or an immovable thing inscribed in his own name, although his author, or the one handing it over, handed over in bad faith a thing already sold to another. Cf. our work cited, n. 285, against Ballerini, work cited, III, 196-202.

c) One who in bad faith completes the time necessary for usucaption is forbidden to use the benefit of the law. This is proved by the very reason of the matter, and by the definition of the Lateran Council IV (1215) alleged above. Thus the most common opinion.

d) What now concerning one who in good faith completes possession begun or continued in bad faith by another? Let the case be the following. Titius buys a field which he thinks has been legitimately possessed by Caius; or, as heir, he obtains in good faith a house which he thought legitimately pertained to the deceased. After some time, for example five years, he knows that neither the field legitimately pertained to Titius nor the house to the deceased; indeed, it is sufficiently clear to him that both kept these things in bad faith. In the law by which he himself is governed, possession of five years does not suffice for usucaption. By joining the possession with the preceding possession, the conditions required by law will be satisfied. Can he in conscience acquire the field or house by usucaption? Although authors are accustomed to weigh this case less explicitly, nevertheless they speak of the good faith required through the whole time and of the joining of possessions in such a way that we must say that this usucaption is repudiated by the common opinion. And indeed it must be repudiated if the positive law itself, as many laws now do, requires good faith continued through the whole time. But what if, as in French and Italian law, the law is content with initial good faith, or demands none? We confess that then, in admitting the common opinion, we experience difficulty.

For: a) the very one whom, in the case, usucaption would benefit, as c. 20 of the Decretals, II, 26, requires, "in no part of the time had consciousness that the thing was another's." Therefore, by conceding usucaption to him, no reward will be given to iniquity. The reason given above concerning liberative prescription under a) returns. - b) Although possession in bad faith, as possession, is inefficacious, nevertheless there accompanies it the fact of a lasting separation of the thing from the true owner. That fact can deservedly be attended to by the Legislator, so that he may grant the benefit of usucaption more easily. For the longer some state of things has remained, by so much the greater difficulty and harm it is changed. - c) Consider this consequence of severity. The Austrian Code, as we noted, grants usucaption of an immovable thing to him who has possessed it in good faith for

three years, inscribed in his own name. Nor is there doubt about the value of this law in conscience. Here possession has persevered in good faith for five years. Why deny the benefit of positive law? Could the law not assign a thing separated from its owner for thirty years to him who had possessed it in good faith for five years, when Austrian law grants usucaption already after three years? Or did it not wish to? But it did wish to, since satisfaction has been made to its conditions. These are the things which seem to militate for the probability of the milder opinion, so that this more general rule may be admitted: one who is not a possessor in bad faith can use the benefit of the law as soon as the conditions of the law have been fulfilled.

Moreover, do not think that those laws which do not require good faith wished to favor iniquity. They were moved by various reasons of the common good so that, at least in the external forum, they would establish certain things more benignly, committing each one to his own conscience. How moderately St. Thomas, *Quodlibet*. 12, art. 25, wrote these things about the opposition between canon law and civil law in this matter: "The reason of this opposition is that the end which the civil legislator intends is different, namely to preserve peace and standing among citizens, which would be impeded if prescription did not run: for anyone at all could come and say: that was mine at any time whatever. But the end of canon law tends toward the peace of the Church and the salvation of souls." (For still more benign things, cf. Piscetta-Gennaro, *S. S. Theol. mor.* III, 165, 175.) S. S.

What Good Faith Is to Be Attended To. a) in persons who have been placed under a tutor, although they have natural capacity; b) in moral persons?

This question, usually omitted, we think must be solved briefly in this way.

1. As regards persons civilly incapable, the good faith civilly required must be considered only in the persons who act for them. But by the moral law they are forbidden to acquire anything unjustly. Wherefore, according to the conscience of those themselves for whom the thing profits, the matter will have to be decided; and practically, theological good faith of tutor and pupil will generally be necessary. For one will have to make the other more certain concerning knowledge of another's right.
2. As regards moral persons, again, in the external forum, the good faith will be that of those who have authority to decide and to act in their name. Therefore according to the mode by which they are governed, it will be either of the Rector or one commanding, or of those voting. But those who have been conscious of another's right, before prescription is completed, will have to restore what has come to them without right.

But D'Annibale, II, 140, (8) at the end, observes that the good faith of successors does not purify the defect of good faith in those who began to possess, because a moral person always remains the same. Indeed, since our civil law demands good faith in the beginning, good faith which was then lacking will not be able to be corrected by the good faith of successors. But concerning natural law, what prevents several things from now being established in good faith, after other things have been established in bad faith? Wherefore the initial defect will be by no means incurable, especially since our law requires no good faith for several prescriptions. We shall pronounce efficacious in conscience a prescription which has been completed in good faith, provided the conditions of the civil law have been fulfilled.

Cases and Scholia. 1. In doubt concerning the good faith of predecessors, which after inquiry has been made is not removed, the principle is valid: "No one is presumed bad unless he is proved such." Wherefore the successor will then be able simply to allege the possession of the predecessor for prescribing. Nor do we condemn him who, ignorant of the bad faith of a predecessor, began to possess the thing in good faith and opposes to the adversary vindicating the thing the prescription completed by the predecessor.

2. Whether a thief who, forgetful of the theft, has possessed a thing for thirty years, can prescribe or not? Some deny it, because he ought to answer concerning the preceding forgetfulness itself and the consequent prescription (St. Alph., l. 3, n. 515); others affirm it, because this obligation also of answering will be extinguished by prescription of thirty years. (Thus Lugo, *De Iust. et Iure*, d. 7, n. 151; D'Ann. II, 110, (8).) But this obligation, which does not exist civilly, cannot be extinguished by civil prescription. Therefore rather let us deny that one ought to answer concerning a legitimate mode of acquiring, such as prescription is.

3. One who, with a doubt not to be despised and invincible, doubts whether the thing which he acquires or possesses is another's, will be able to continue possession begun in good faith and thus prescribe: for he is in theological good faith, and the law does not demand good faith more strictly so called except at the beginning of possession. Nor is it otherwise, if a doubt arises whether you are bound by some debt to be paid: if, after investigation, the principles concerning restitution permit that you do not pay the debt itself, you can prescribe with that theological good faith, unless the law demands positive good faith.

4. Creditors can always, with safe conscience, oppose the civil prescriptions of their debtor, without consideration of the faith of the debtor, because they themselves, by a merely legal means, pursue their right to full payment.

Nor is it otherwise, since modern laws are accustomed, from two buyers of an immovable thing, to prefer him who first took care of transcription in the public register; he who, after another, bought the house in good faith and took care that it be transcribed, can safely vindicate it for himself. And if a mortgage creditor, who had been inscribed first, neglected the timely renewal of the inscription, another can safely take the place of the prior one.

5. Of itself, prescription must be completed by the law by which it began to be made. Wherefore of itself it is not affected by a new law. Nevertheless, peculiar statutes of certain laws concerning this matter exist. Cf., for example, art. 19 Swiss Civil Code.

Summary

Concerning the Various Original Modes of Acquiring Rights. — 1. Occupation: the apprehension of a thing belonging to no one, with the intention of having it as one's own. For by the fact by which a thing belonging to no one is shown, according to its nature, to be subject to someone, or to serve for a use which cannot be common, that thing is connected specially to him by this bond which, under the regime of divided property, is inviolably confirmed. Occupation is called the primordial fact which gave origin to private possessions.

Wild or untamed animals can be occupied, but not domestic or tamed animals. Yet a proper right of hunting or fishing can be initiated by certain modes of hunting or fishing, and can be injuriously violated.

Attention must be given to the dispositions of civil law concerning certain animals, such as rabbits, doves, bees.

2. Treasure, whose very notion varies according to the various law, is rather commonly designated as a movable thing (precious), deliberately hidden or buried, which no one can prove to be his own. Most laws, rather arbitrarily, either wholly or in part assign to the owner of the land and to the finder the ownership of the treasure, which, from the law of nature, would yield to the discoverer; and most think that by this law, insofar as it is not penal, conscience is bound: nevertheless, concerning this matter, before the sentence of the judge, we doubt.
3. If natural law is considered, things recently lost cannot be occupied except from the time when recovery by the owner is despaired of. In the meantime charity, unless you are excused by inconvenience, will oblige you to collect the thing; then justice, to take care of the thing and to seek the owner by the means which are at hand; and place is given to that good faith, broadly so called, by which you conditionally assign the thing to yourself unless the owner is found. What civil laws establish about these things, as also about things left after battle or shipwreck, must be considered.
4. By the addition of a thing to one's own thing, there is generated, whether by nature or by positive law, a certain extension of ownership which is called accession. Thus, by nativity, fruits, and hence offspring, are assigned to the owner of the fruitful thing, such as the animal giving birth. This accession is common to movable and immovable things; while the proper accession of movables is made by adjunction, specification, commixture or confusion; but the proper accession of immovables, by alluvion, relict, island, building, planting: concerning which things positive laws must be consulted.
5. Prescription is an original mode, of positive law, of acquiring a real right or destroying an obligation or action, after a certain interval of time has elapsed, and with the other prescriptions of the law observed.

It is distinguished as acquisitive (usucaption), which at the same time gives an action for vindicating the thing and an exception for repelling the adversary; and liberative, which confers only an exception by which someone, if he wishes, can render the creditor's action entirely void. Besides the debtor, others whose interest it is can oppose prescription. Prescription acts backward, so that, after it has been completed, the effects are computed from the day on which it took its beginning. Perfect ownership is not lost by mere prescription, without another's usucaption.

But because it has been introduced by positive law: a) prescription is null unless satisfaction has been made to the conditions of positive law. Generally laws require, for every prescription, a certain time, which, with the first day neglected, is computed from day to day, not by hours; for acquisitive prescription, moreover, a continuous or uninterrupted possession, which is not vicious, i.e., peaceful and public; for several usucaptions or prescriptions, in addition, a colored title, or a cause apt of itself for conferring a right, but inefficacious because of a hidden defect; and good faith strictly so called; b)

it does not operate more than the law intends, so that you must distinguish prescriptions by which a mere action of the external forum is destroyed from others which extinguish the right; c) in order that it operate in conscience, the law must be just, nor can it be understood in such a way that it seems to confer a reward upon fraud and sins. Wherefore one who in positive bad faith completes the conditions of civil law cannot of itself use prescription. Yet except the case in which a cause of the common good, independent of good faith, founds the law of prescriptions: which we judge to obtain concerning the five-year prescription of interest in Italian or French law.

Nevertheless, a creditor can always oppose the legal prescriptions of his debtor, without consideration of this latter's good faith.

In a serious and invincible doubt whether the thing which you acquire or possess is yours or another's, you are in theological good faith, so that you can begin and perfect the prescription which civil law admits.

Unless positive law has ordered the matter otherwise, prescription must be completed according to that law by which it was begun, even if a new regime has been introduced.

Which prescriptions are in force is explained in the text.

2. Derived modes. They are contracts, gifts, inheritance, testament, concerning which one must speak separately, delict and quasi-delict, which find their place in another section.

Chapter VI: Concerning the Derived Mode of Acquiring Which Is Contract

Article I: Generalities Concerning Contracts

I. Notion, Division, Elements in General

What a Contract Is. A contract is the consent of two or more persons in the same juridical agreement (cf. l. 1. *Huius* § 2. l. *De pactis*, II, 14). - Many things to be said concerning contracts are valid concerning a quasi-contract, which is an honest fact, existing by authority of law or by the voluntary will of someone, which produces a certain obligation of justice. Such is the management of affairs.

A contract can be considered *in fieri*, or in its constitution, and *in facto esse*, or in the permanent juridical effect which it produces.

How Manifold It Is. A contract is divided under various respects. 1. From the intention of the contracting parties, or the end of those operating, contracts are gratuitous or onerous, according as the stipulation is made from an intention of benefiting the other party, as for example in donation, or the utility of both is intended. A mixed contract is one in which only a partial price is demanded; but it remains gratuitous if it is annexed to donation. Analogically onerous is that on the occasion of which something must be paid under another title, for example of support. - An onerous contract is commutative, if what must be furnished is certain from the beginning; it is aleatory, if this depends on an unknown or uncertain event, for example in insurance.

2. From the end of the work, every contract changes rights: but some contracts immediately change real rights, as, in our law, donation; others beget a personal right, insofar as they generate an obligation of justice. Yet observe that it is not admitted by every law that a real right is transferred by consent alone; and that for the most part, in order that a juridical change affect persons extraneous to the agreement, a certain inscription in a register or tablets is required, or another solemnity is commanded, whereby knowledge of the matter can be had by those whose interest it is.

Moreover, an obligation of justice is distinguished from an obligation of fidelity. In this latter, mere faith is interposed; and its obligation is light in kind. In the former, a right is granted, which of itself is grave. An obligation of fidelity does not pass to heirs, unless the one promising wished efficaciously to impose on them the burden of a real promise, while an obligation of justice affects the patrimony. (Cf. *Quaestiones de iustitia*, n. 290.)

3. From effect or efficacy: a) Some, if substance or stability is attended to, are in general valid, firm, or in various degree infirm, invalid: which are either plainly non-existent and lacking the very figure of a contract, as a civil marriage without an official and witnesses; or are simply null, which are invalidated by sentence of the judge. More properly, those are called rescindable which, because of lesion, or excessive detriment of one party, can be invalidated.

b) Others, as regards the effect of obligation, are unilateral or bilateral (synallagmatic), according as an obligation is imposed immediately on only one party or on each party. A unilateral contract can be onerous: thus a loan for consumption with a stipulation of interest.

c) There are also, if juridical efficacy is attended to, naked or clothed contracts, according as they produce only an obligation of conscience or also a civil action. Naked contracts are not always devoid of every civil effect: for example, it can happen that what has been paid from a naked agreement cannot be sought back.

4. By reason of form, some are consensual, which are perfected by consent alone; others real, which have their beginning from the handing over of the thing (pledge). - Some are solemn and simple, according as positive law has imposed certain forms to be observed or not. Most today are simple. - They are express or tacit. Thus, from the fact that an accused man approaches an advocate who undertakes his cause, a tacit contract is had between them.

5. By reason of appellation, they are named, which have a special name, or unnamed, such as the four real contracts (which are called regular): I give that you may give; - I give that you may do; - I do that you may give; - I do that you may do.

6. By reason of subsistence, they are principal, which stand by themselves, or accessory, which accede to another principal contract: pledge, hypothec.

— 1. The constitutive elements of a contract are distinguished as essential, natural, accidental. Essential elements cannot be excluded without the contract becoming null or another contract. Thus, if the price is suppressed, sale becomes donation. - Natural elements, as it were of themselves, accompany the contract, so that unless they are positively excluded, they are considered, from law or custom, to be contained in the contract by the tacit consent of the parties: thus, in purchase-sale, the guarantee against eviction, in favor of the buyer. - Accidental elements are not included in the contract unless they have been agreed upon in express words. Thus a day given so that the buyer may more easily pay the price.

2. The essence of a contract is always composed of the thing or matter, by which is designated the remote or proximate object about which the agreement turns: a horse, a horse to be sold; and of consent, or the conspiring of the wills of persons who are capable by law. Conspiring supposes wills of the parties which agree concerning a substantially identical thing. Must cause besides be added? This today is rather much disputed and is denied by many jurists. By the name of cause there are by no means designated the various reasons which could have led each party to consent; but there is understood the proximate motive which, proper to each contract and therefore always the same, enters into the agreement itself. In gratuitous contracts, the cause will be the intention of beneficence; but here, in moral estimation, the subjective motive itself by which the intention has arisen will have to be considered. In onerous exchanges, one party does, gives, promises, on account of the performance or promise of the other: the seller yields the thing on account of the promise of the price; the buyer promises or pays money on account of the promised or accomplished handing over of the thing. Some defend the utility of distinguishing cause from object, for cause is essentially required to be licit, and it can turn

upon an illicit object. Thus a delict is an illicit object; reparation of the delict makes a licit cause. Others think the distinction useless, for cause is confused with the proximate object.

II. Concerning Object and Cause, in Particular

I. Concerning the Object of a Contract. The object of a contract, if it is a thing, must exist at least in hope; under the respect under which it is considered, it must not be outside commerce; and it must be estimable by price: such is not a simple showing of the way made by anyone, nor anything which is already owed from justice. But nothing prevents you from receiving a price for an obligation undertaken, although by accident, on account of a similar obligation already undertaken, you fulfill it without new inconvenience: thus a messenger who, on account of another cause already present, must go to a certain city, can of himself demand solid compensation for making the journey. - If a contract is made concerning an action, this must be possible, physically and morally; useful to him for whose sake it is done; honest. Indeed, moved by their liberal prejudices, many jurists of France and Belgium have denied that a contract can be made concerning an object of the moral order, but say that it is required that the stipulator, at least from a penal clause or from an added stipulation for his own advantage, of which the other is made accessory, perceive an economic or pecuniary utility. That opinion is founded neither on the text of the Code nor on the authority of tribunals. Wherefore effort must be made that that prejudice be abolished. Cf. Colin and Capitant, II, p. 293, 1.

If the thing exists only in part, or the action has been possible only in part, it will have to be estimated from the nature of the thing and the intention of the parties whether partial performance is to be made or not.

Thing and action ought of themselves to be proper to the one promising. Yet someone can promise another's deed; nor does anything prevent that, by selling another's thing, someone immediately oblige himself first to acquire the same thing for himself. This frequently happens in commercial business.

Jurists also deny that a stipulation in favor of a third person will be civilly efficacious, unless, for example from an added penal clause, you have created for yourself some economic utility. For otherwise the right could be urged by no one: not by the contracting party, since it does not interest him; not by the third person, to whom nothing has been promised.

Certain objects are excluded by various laws. Thus liberty cannot today be alienated indefinitely (art. 1780, French Code); public functions, and not rarely a future inheritance, cannot be objects of contract (art. 1600 F.C.).

What forensic usages bear concerning objects of a higher order must be carefully attended to; as for example, concerning the religion in which children are to be educated; concerning religious or merely civil funerals; concerning cremation, etc.

II. Concerning the Cause of a Contract. This must be true and licit. By positive law many causes are prohibited which are opposed to the law of nature. A contract of base cause is void both by the law of nature and by positive law. Yet once the base deed has been fulfilled, the indifferent price which is paid can be retained, indeed, according to the common opinion, can be demanded. But it must be seen whether by positive law a *condictio* (i.e., a personal action) for what is not owed is granted. By the Code of Germany, art. 817, it is denied.

It also happens that, because of a certain reason of the common good, the legislator sanctions the transfer of a right, with consideration of cause neglected. To this kind can be referred the disposition of art. 707 of the Italian Code, 2279 of the French Code. They are called in German *Abstrakte Rechtsgeschafte*.

— It can be asked whether or not a cause which of itself does not appear must be expressed in the contract. Is it, for example, enough that someone promise the payment of money, or must he besides indicate the cause of the debt? Art. 1192 of the French Code does not require the expression of cause. But practically, at least in the law of Belgium and France, beware lest the debtor sign merely by name a document in which his debt is stated, but let him acknowledge the debt in at least a few words written by his own hand. Let him write, for example: "Good for 1000, owed by me" (*Bon pour 1000. dus par moi*). Otherwise juridical proof may be lacking.

III. - Concerning Contracting Parties, in Particular

1. Notions. In the matter of contracts, it is necessary to distinguish parties, third persons, author, successor, or one having the right, one having the cause. Parties are the contracting parties themselves, who by themselves or through representatives effect the agreement itself; and the one offering or promising is called the promisor, the stipulator, the one who acquires the promise or the right. Third persons are those who are extraneous to the juridical business. The one who gives origin to someone's right is the author (thus a testator, a seller); the one who succeeds in the right is the successor, or also the one having the right, having the cause. (In French, he concerning whose inheritance there is question is often called, as a substantive, *le de cuius*.) Frequent, also for conscience, is the use of the principle concerning a thing done between others, by which the effects of agreements are circumscribed to the parties and cannot bring prejudice to third persons. Yet successors in the patrimony receive that patrimony burdened with all its burdens; and a right which someone has from another cannot be received except such as it existed with the author, therefore affected by the same qualities and defects.

2. In order that a contract be valid, the contracting parties must be capable. By the law of nature every physical person, and also every moral person legitimately constituted, is capable so that he may contract by himself or through others (Cf. Slater, *A manual*, etc., I, 486).

One who enjoys the use of reason is capable of contracting by himself.

But with moral persons omitted, concerning whom different laws establish things differently, by modern laws physical persons are capable, except those who are affected by legal incapacity. By such incapacity there have customarily been protected minors by age, persons of infirm mind and spendthrifts, and, in still many laws, also wives. Acts which they perform are sometimes declared null, with relative nullity concerning which only the incapable person and those who represent him can act; sometimes they are merely rescindable because of lesion. Various laws must be consulted. In the forum of conscience, the persons protected can use these laws. Yet if they have acted deceitfully in the contract itself, it indeed does not therefore oblige them more than is established by positive law, but they will be held for damages. Thus a minor who sincerely, or with the intention of returning it, has received money as a loan, and then dissipates it prodigally, is held to nothing by either law,

civil or natural. But if he contracts fictitiously, with the intention of dissipating and not returning, he will have at least a natural obligation of restitution.

Nevertheless, that by which an incapable person has been made richer from the contract which is invalidated must always be restored. Finally, not rarely today the capacity of a minor by age is increased by special laws which favor deposits in public savings banks.

While the law protects a minor against his weakness, it by no means thinks of rendering him immune from the effects of his delicts.

Besides general incapacities, special ones are established for restraining abuses, by which, for example, physicians can validly receive nothing, by gift or testament, during that illness, from a non-consanguineous sick person whom they cared for in his last illness.

2. Minors by Age from Positive Law. I. Norms rather common. From rights which regard things, personal rights must first of all be separated. For in various laws, personal rights find and also make an adult minor more capable. They find him, for example, capable of validly contracting marriage, of acknowledging illegitimate offspring (which the Code of Holland (337) always grants to the mother, to the father if he is 19 years old); they make him capable: for, at least with the assent of those who must consent to the marriage, capacity for nuptials will bring with it capacity for making nuptial pacts, at least where those pacts cannot be celebrated except before the nuptials; and most laws admit emancipation by marriage.

In the order of things itself, a minor is often more capable of making a testament than of contracting.

In the present place, however, there is question only of the capacity of contracting. These things, then, are almost common to positive laws.

1. As long as minors by age are not at least emancipated, they themselves generally cannot firmly contract obligations: but, with the cautions prescribed for graver acts observed, either parents or tutors act for them. Yet some laws permit them contracts by which they receive goods without obligations; they also permit them to deposit their own money as if adults in a public savings bank, and they establish the mode by which they can lease their labor.
2. After they have been emancipated, in graver acts a curator must be present for them, or in a similar way care is taken lest in these things they act imprudently.
3. The nullity of agreements which an incapable minor has made is not absolute but relative, insofar as it can be opposed by the minor or by him who represents the minor, but not by the other contracting party.
4. Because the legislator intends to protect minor age, not to patronize frauds, a minor who has deceitfully feigned himself older by age either is held for damages or can no longer allege age for the nullity of the contract. But what is required that that deceit be had juridically is defined differently by different laws.
5. Ratification by which an infirm act is healed is generally admitted by law, but only from the time when the contracting party has become an adult.

II. Certain things proper to some laws. 1. In Latin law, the incapacity by which minors by age are protected coheres with paternal power, insofar as those who exercise paternal power act for minors or with minors, and insofar as that representation directly affects only legitimate or legitimated children. Yet by legal tutelage, which confers a similar paternal power, even natural children are protected.

By the Austrian Code, there are distinguished infants, who have not yet completed seven years; impuberes, who have not yet completed fourteen years; pubescent minors, who have not yet completed twenty-four years. Yet free disposition concerning the fruits of one's own industry is permitted to a minor who is not nourished by parents; but one twenty years old can obtain from the judge a declaration of majority (252) and free administration of revenues which exceed annual expenses. Moreover, the leasing of labor made by a minor cannot be invalidated by a tutor without a grave reason. - By the Codes of Austria (241), Switzerland (19), minors can acquire goods without obligation. By the Brazilian Code (5, 6) absolute incapacity is sanctioned, without exception for deceit, until the age of sixteen years: afterward it becomes relative. - From the Code of Holland, a minor eighteen years old can obtain partial emancipation from the judge, if the parents are not unwilling (480-485); he alone deposits money in a public savings bank; with the consent of the one by whom he is represented, he is permitted to lease his labor. It is proper to the Code of Spain that even contracts made by a tutor, within the scope of his power, can be rescinded because of lesion or damage which exceeds the fourth part of the value of the object.

By Italian law an action of nullity is prescribed in five years (after majority). Acts clothed with the due solemnities are firm no less than acts of one older by age.

The Latin laws agree in sum, except that for the most part the prescription of the action is reduced to four years. Yet the Code of Portugal has preserved prescription of five years. - Besides, the Code of Spain gives an action by which acts themselves made by a tutor, within the limits of his power, nevertheless can be rescinded because of lesion (or damage) which exceeds the fourth part of the value of the object.

A less simple regime has been introduced by the Code of France (and of Belgium), whereby some acts are merely rescindable, while others are invalidated by relative nullity. a) A contract, whatever one the minor has made, can be rescinded if it has been even a little injurious: provided the damage has flowed not from a fortuitous event but from the agreement itself. Therefore this is valid: the minor is restored not as a minor, but as one injured. b) But if he has made acts which the tutor himself could not make alone, or if he alone has received payment of a debt, those acts are null with relative nullity. - Concerning an emancipated minor, there must be distinguished: a) acts which he can make alone: they are firm, yet in such a way that if they oblige him to excessive expenses, they can be reduced by the judge to just terms; b) acts which he could but had to make with the assistance of the curator: they are rescindable because of lesion; c) acts which were besides subject to other solemnities: they are affected by relative nullity. - Actions concerning nullity and rescindability are prescribed in ten years from majority.

2. By the law of the German Code, a minor, even alone, can make acts which merely profit him without burden: but acts which can be damaging to him he cannot make firmly without the authority of the one who represents him, or also, sometimes, of the tribunal of tutelages.

These can ratify such acts. But unless ratification has intervened within two weeks, the acts are null. Acts, however, which are made with the due solemnities are firm, as if made by one older by age.

3. By English law, a minor can make certain contracts profitable to himself or reasonable and congruent with his state or condition. Other contracts, however, are absolutely null and cannot be ratified. But a minor never obtains the benefit of fraud.

4. In the U.S.A., the principle formerly admitted, by which all acts of minors were null or subject to annulment, is reasonably tempered. Nothing more definite seems able to be said.

3. Wives from Positive Law. I. More general indications. A greater variety of laws is perceived here. For some laws admit no incapacity of contracting proper to the wife; others, merely for firming the authority of the husband, require his assistance; while others intended also to provide for the weakness of the weaker sex. But a judge can generally supply the denied license of the husband. Moreover, the inclination of modern laws is toward restoring general capacity. Indeed, certain laws have begun to acknowledge the wife's right of managing the family business, imputing expenses to the common goods. But a wife who is permitted to exercise a separate art or business has already long enjoyed full capacity in these matters. Modern laws also are accustomed now to make the wife capable of administering the moneys which they have entrusted to public savings banks. The nullity of contracts, however, can sometimes be opposed by only the other spouse, sometimes by the husband and his heirs, sometimes by the wife, indeed also by her heirs. By permitting this to the wife herself, the legislator demonstrates the intention of protecting her infirmity.

II. Things proper to various laws. 1. Latin law. Neither in Austria, nor in Switzerland [1], nor in the republic of Costa Rica is a special incapacity of the wife sanctioned. Moreover, by the recent law of 17 July 1919 it was suppressed in Italy.

By the Swiss Code, not only the husband, but also the wife, for daily expenses, represents the community (168). But by the Brazilian Code, whatever the nuptial pacts may have been, the husband cannot make graver acts concerning the goods of the wife without her assent; indeed he needs her consent in order to make notable donations from the common goods (285). Again, however, the wife also needs the general or special license of the husband for acts which touch her own goods (242). The nullity of an act unduly made without the husband's consent can be opposed by the husband (252); but an act which the husband has unduly made without the wife's consent, the wife and also her heirs can impugn (239).

Nevertheless, among most Latin nations, a certain incapacity continues to subsist: thus in Spain, Holland, Portugal, Romania.

In France the severity of the Civil Code has been tempered by more recent laws: for example, by the law of 13 July 1907, completed by the law of 8 June 1923, the wife is permitted to manage freely the gains and goods which she has obtained in exercising a profession distinct from the husband's profession; - by the law of 12 March 1920 she can freely enroll in a syndicate; she can have and administer deposits in a savings bank; and she obtains full capacity when separation of bed has been obtained.

Even with these things omitted, except for the capacity which she draws from nuptial pacts according to the various regime of goods, she needs the authority of the husband for contracting. And the license must be special and of itself written, unless there is question of exercising a profession or of acts which are not customarily written.

The license of a husband who refuses to consent or who is incapable can be supplied by a tribunal.

Acts made without the due license are vitiated by relative nullity, which the husband, the wife, and the heirs of each can use within ten years (art. 225). Acceptance of a donation is absolutely null.

2. The Code of Germany establishes no incapacity of the wife. Yet the husband can seek rescission of an obligation which demands the wife's personal labor.
3. By the law of England and the U.S.A., the wife long labored under absolute incapacity. But by the Act of 18 Aug. 1882, she was made fully capable; and even in the U.S.A. incapacity has been so suppressed that she can make all contracts not expressly excluded by statute.

[1] Yet she needs the consent of the husband in order that she may renounce an inheritance.

IV. - Concerning Consent in Particular — A. - What Consent Is Required and What It Effects

The Necessity of Consent. 1. A contract, which must be well noted, denotes a voluntary exchange of rights; moreover, no one unwillingly acquires a right, at least definitively, while the one offering wishes to transfer some right, not simply to lose it. Wherefore true internal consent is required, and mutual consent, so that what one offers, that very thing the other expressly or tacitly accepts. For in favorable matters the proverb easily obtains: "he who is silent seems to consent." In order that consent be mutual, it is necessary that both wills be formally joined, and therefore that the one offering intimate his will to the other, either by himself or through a procurator.

2. This consent is not impeded by the will not to fulfill the obligation; but it is impeded by the will not to bind oneself. But if the negation has been partial, i.e. if someone rejects, from among several obligations of the contract, some one which he did not know to be conjoined, the prevailing will must be investigated, and according to it judgment must be made concerning the matter.
3. Positive laws sometimes require that consent be expressed in a certain form, either for the very value of the act, or so that the contract can be proved. In the former case there is had a solemn contract, such as marriage is in ecclesiastical law; such as, in civil law, are nuptial pacts and a testament. In the other case the agreement is valid, but cannot be juridically demonstrated. Thus no agreement concerning a thing which exceeds 500 lire in value can be proved by witnesses, according to the Italian Code, art. 1341.

Concerning the Beginning of the Obligation. A twofold question is moved here.

1. Can, and for how long can, either the one promising or proposing a contract efficaciously revoke the promise, or the one accepting revoke the acceptance?

The question is scarcely practical when a consensual contract is made between those present; and such also is judged to be the case when the parties make an agreement by telephone. For a response is at the same time given and intimated by one present, and when the response has been given immediately the contract is perfected. But unless it is given immediately, the one promising can retract his consent; nor is that retraction judged harmful to the other.

But when an agreement is carried on between absent parties, by letters, by telegram, by messenger, the matter, because of the damage which retraction can bring to the party who was ignorant of it or did not fear it, becomes less clear; and even among jurists themselves it is controverted, when positive law does not explicitly define the matter.

The classical doctrine, received for a long time, alleged the very essential nature of a contract in order to permit to the one promising revocation before the acceptance of the other, unless he had manifested a different intention of binding himself, and this had been accepted by the other party. Thus still Pacifici-Mazzoni, *op. cit.*, IV, § 47, who nevertheless bind the one retracting to pay damages, if the one accepting the promise, whose revocation he was ignorant of, had thereby been injured.

Today, however, not a few contend that the one promising, at least implicitly (unless he expressly says otherwise), by the promise itself, is obliged to await a response given in due time. This, unless a day is fixed, must be given immediately between those present, but among absent parties during the time of normal expectation. (Cf. Colin and Capitant, *op. c.*, II, p. 270 ff.). Observe, however, that a promise is not reputed perfect before it has reached the other party, so that by a telegram which arrives sooner, or even with letters which arrive at the same time as others containing the promise, the promise can be made null or be revoked.

Many also in the same way permit to the one accepting that, before the message has arrived, he may efficaciously revoke the acceptance. Otherwise one must say, of itself, if the contract is judged perfect from the acceptance once dispatched.

When absent parties make an agreement, the Austrian Code, § 862, saving an express stipulation, obliges the one promising to await within 24 hours the response of the other party who is in the same place; but if he is in a different place, for twice the time necessary for sending the response. But the Brazilian Code (1081-1086); the German (130 and 145); the Swiss (C. obl. 3-10) explicitly sanction the opinion which we were calling modern.

2. From what moment is a contract judged perfected?. Does it suffice for the perfection of the contract that acceptance has been made, or is it further required that it become known to the one promising; indeed, that it be suggested or intimated to him by the one accepting or by a mandatary?

I. That merely internal acceptance does not suffice is clear of itself, since merely internal consent cannot change juridical relations of men.

But, from the law of nature, from acceptance expressly or tacitly manifested (which, among absent parties, can be understood of acceptance dispatched, e.g. through the postal service), a contract is of itself perfected. (Concerning this matter, Carriere, *De Contractibus*, I, 31-34.) Of itself, I say; for the parties can defer the mutual obligation, e.g. until they have signed the instrument. They will rather easily have this will if from the beginning they wished to write the contract. Wherefore the Code of

Germany, art. 154, declares that in doubt parties who have agreed about drawing up an instrument are not bound before the instrument has been made.

II. What Positive Laws Establish. 1. In Latin law, at least of Italy and France, controversies are not lacking which ought to make a theologian cautious in responding. Nor do the laws themselves agree. Omitting, however, certain contracts for which, as for donation, in French law the intimation of acceptance is explicitly required, they are accustomed to distinguish unilateral agreements, which are perfected by acceptance (Pacifici-Mazzoni, IV, p. 161), and bilateral agreements, which are not judged perfected until the very intimation of acceptance has reached the one promising. In this matter they adhere to the opinion of C. de Lugo, *Iust.*, d. 22, n. 27. The Code of Spain, art. 1262, explicitly establishes this. But one must also attend to commercial laws and usages, which are accustomed to order a more expeditious conclusion of transactions. By the Brazilian Code, a contract is perfected from the acceptance once dispatched; nevertheless a retraction is useful which arrives at least together with the acceptance (1086).

2. German law agrees with Brazilian law (130, 151); yet it explicitly excepts the case if there was a usage of notifying the acceptance.

3. By English law the signification of acceptance is judged necessary for perfecting the contract. Yet if the one offering has expressly or tacitly admitted that the other may accept through letters committed to the postal service, that service is considered as the mandatary of the one offering, so that from the moment at which the letters of the one accepting have been handed over to it, the contract is perfected; nor does delay of dispatch or loss of the letters affect the condition of the agreement. - 4. The same holds in the U.S.A., but one who offers orally is not judged to have given such a mandate to the postal service. Wherefore, then, the contract will be perfected only from the moment at which the written response has arrived.

A real contract, however (loan for consumption, loan for use, pledge, etc.), has its beginning from the thing handed over or the performance made. But even before this the promises of making a loan, etc., will be valid, if they are contained in a true agreement.

What Does Supervening Death or Incapacity Effect?. If either the one offering or he to whom the contract has been proposed, before acceptance, either dies or becomes incapable, what is the law concerning the heirs or concerning those who represent the incapable person?

From the law of nature, the heirs of the one offering, no less than the one offering himself, can revoke the proposed contract. But what they have done expressly or tacitly must be examined. From the intention also of the one offering one must estimate whether the heirs of him to whom the matter had been proposed can perfect the contract by their acceptance, or whether the transaction must be wholly begun anew.

The canonical Code establishes nothing expressly concerning the matter. Therefore we are sent back to the law of nature and, according to c. 1529, to the civil law in force in the region where the question arises. Civil positive laws which deny that an obligation flows from the promise itself, as such, will generally establish that the transaction is ended by the death or incapacity of either party: thus Pacifici-Mazzoni, IV, p. 160, respond concerning Italian law; while by the Code of Germany,

acceptance is not impeded of itself by the death or intervening incapacity of the one offering (i.e. unless a contrary will of the one promising is demonstrated).

Corollaries for Conscience.

1. Credence will have to be given to the party who wishes to use a positive law by which retraction is permitted or denied. Cf. also Ball.-Palm., *Op. theol.*, III, 639.
2. He who by letters offers something, even by a gratuitous title, if he explicitly or implicitly awaits a response, is not judged to have wished to oblige himself before it is certain to him concerning the acceptance (Ball.-Palm., III, 638).
3. Since a contract is of itself an act concluded between the parties, if either party, unfaithful, contracts with a third party, he will be able to use a positive law which confirms the later agreement.
4. Goods which are publicly available for sale in shops are judged to be perpetually offered for the price indicated there. Wherefore a buyer entering the shop has a right that the goods be handed over to him for the proposed price.

It is not so certain that the same must be said about notices by which books or instruments are offered for a definite price, so that a contrary notice would not be sent usefully except before acceptance. Therefore in these matters one must act cautiously.

5. Although certain authors, especially before the Code, said that promises or donations made to a Church or to a pious cause were valid before acceptance, the contrary opinion, already before the Code, was more probable; and this holds much more now, since civil laws concerning contracts can of themselves be applied in ecclesiastical matters. Wherefore he who, before acceptance, has revoked a donation of this kind will practically be held to nothing.

What if the promise or donation is made immediately to God for a Church?

God is not for that reason judged to have wished to have the thing in His dominion as a man would, but a promise or offering of this kind is valid as a vow; nevertheless, before acceptance, this vow is not reserved, since there is no acquired right for anyone. Cf. Ball.-Palm., III, 634, who adds that donations of this kind in doubt are judged to have been made to God.

B. - By What Causes and in What Way Consent Is Vitiated

Three defects of consent are customarily enumerated: error, fear, fraud. (For the notions, cf. I, 54 ff.; 78 ff.; 86.) To these the effect of lesion or damage can be added by way of appendix. Concerning each briefly.

I. Concerning the Defect of Error. 1. How manifold error is distinguished. a) Principle. Consent is especially vitiated by error, so that of itself, as it were in the first sign of reason, every error by which consent has been determined invalidates the contract. For it takes away the voluntary, and a contract is a voluntary exchange of rights. Yet the very security which a contract ought to give to each party forbids that every error be attended to; so that the contracting parties are judged, by a virtual

ratification, to renounce the benefit of many errors, and they ought to renounce it. Which errors are to be considered, and which are to be neglected, we are taught by various distinctions.

b) Distinctions. Substantial and accidental error are distinguished. The former affects the essence of the contract: whether its nature (a donation instead of a sale), or its cause (you return money as if received in a loan, and it was not given as a loan), or its object, which, of itself or because of the definition of the parties, is essential. Wherefore a quality which is principally intended pertains to the essence so understood (it is said to redound into the substance). Thus if you seek wine for sacrifice, aptitude for sacrifice will be essential. Another error is accidental. Yet it can give cause to the contract, if without such error consent would not have been given.

2. What error effects of itself. Substantial error of itself annuls the contract; not likewise accidental error (even if it gave cause to the contract), unless consent has been expressly or tacitly subjected to the quality which is falsely thought to be present, as to a condition without which not (I contract if such a quality is had).

Yet if that error gave cause to the contract, and flowed from the deceit or fraud of one party, the other party can rescind the contract at his own choice.

Indeed, even if no fraud has been committed, as soon as error was truly the cause of contracting, Lessius, *Iust.* c. 17, n. 33, and St. Alphonsus, L. 3, n. 715, give to the party who erred the power of withdrawing from the contract, provided, as Genicot, I, 589, III, aptly adds, that he keep the other party unharmed.

If the error was vincible, the damages thence arising will have to be repaired according to the degree of fault.

3. What error effects from positive law. Positive laws by no means ignore the distinction of substantial and accidental error, but describe it variously, and because of substantial errors they render the contract void either by full right or at least after the sentence of a judge. But modern jurists are accustomed to distinguish an error by which all consent is so excluded that the contract is absolutely null, as if one party thinks that he is receiving as a gift what the other wished to yield only for a price (*error in negotio*); an error which begets only relative nullity, which is pronounced or admitted by the authority of a judge, as if there is error in a quality altogether necessary for the destination of the thing; and an error with which the contract subsists. Cf. e.g. Colin and Capitant, I, 68; II, 277 ff. For the most part the error of one party suffices for invalidating the contract; yet it happens that only mutual error is attended to from equity, or that rescission is not granted to the one erring except with the obligation of paying the damages which he has brought upon the other party by erring rashly. (Cf. Pacifici-Mazzoni, II, § 137; IV, 49-54.) Some errors, especially errors of law, will seem less excusable to the judge. In the U.S.A. an error concerning the law of a foreign nation is equated with an error of fact.

Concerning error, canon 101 establishes these things: "Error renders an act void, if it concerns that which constitutes the substance of the act or falls upon a condition *sine qua non*; otherwise the act is

valid, unless something else is provided by law; but in contracts error can give place to a rescissory action according to the norm of law."

Of what law? Of the civil law in force in the region, unless we are mistaken, because of c. 1529, by which, in ecclesiastical matter, those things are said to be observed, unless divine law or a different disposition of canon law stands in the way, which the civil law establishes in the territory. But before this canon 16, § 2 warned these things: "Ignorance or error concerning a law or penalty or concerning one's own fact or concerning a notorious fact of another, generally is not presumed; concerning a non-notorious fact of another, it is presumed until the contrary is proved." Yet these things do not directly regard contracts. It also helps to recall this from the law of the U.S.A.: if, because of mutual error, or the fraud of one party, the contract does not agree with the true intention of the parties, the tribunal will, from equity, reduce the contract to the true intention of the parties.

What the individual civil laws have disposed concerning the effect of error does not seem to be ours to pursue at greater length [1]. The chief point is that we keep these few things in mind for conscience. It is lawful to estimate the effects of error according to natural law. It is also lawful for him who is not guilty of blameworthy fraud to use the protection of civil law, whether for invalidating or for confirming the agreement. And the sentence of a legitimate judge must be obeyed.

[1] Cf. e.g. the French Code, 1109-1110; Italian, 1108-1110; Austrian, 871-875; Swiss (Code of Obligations), 23-26; Netherlandic, 1357, 1358, 1485; Portuguese, 656-665; Brazilian, 86-91; Code of Germany, 119-122. Notable is this provision of the German Code: that damage must be repaired by him who erred to the other party who was without fault and suffered damage thereby (art. 122).

II. Concerning the Defect of Fear. 1. Distinction. A contract is said to be made from fear, if without fear there would not have been agreement; it is made directly from fear, if fear has been instilled in order to extort consent; it is made indirectly from fear, if fear has been introduced for another end, so that the contract in itself is just [1].

2. Effects, with the law of nature considered. Omitting fear which so disturbs the mind that it takes away essential deliberation, and fear from within, or from without but just, by which a contract is not vitiated, all first oblige the author of unjust fear to repair damages. Then, if the contract is made directly from fear from without and unjust, some now permit him who has suffered fear to rescind the contract, provided the fear was comparatively grave (with respect to the trembling person), or, if light, nevertheless gave cause to the contract and there is question of a gratuitous contract or one which, like betrothal, requires greater liberty. They establish this from equity. Others deny that the contract is invalidated, unless the other contracting party was himself to be blamed for the crime, at least as an unjust cooperator. If he was to be blamed, they make the contract rescindable at the will of him who has been affected by fear; indeed some, at least, make it null, provided the fear was at least comparatively grave. - Fear which was neither a sufficient nor a necessary cause of the contract does not vitiate it, but obliges to repairing damages. - Finally, if a contract is made indirectly from fear, the contract is not rescindable unless the other contracting party was to be blamed.

Those solutions rest upon this principle, that the voluntary is not taken away by fear; but that equity requires that the juridical effects of an unjust action, as far as can be done, be restricted.

3. Positive laws.

a) What fear effects in canon law, we said in I, 81-84. Here it will be enough to recall that a vow emitted from grave and unjust fear is invalid; likewise a renunciation of an office or benefice made from grave and unjust fear; a marriage which someone had to choose in order to free himself from grave and unjust fear; admission into the novitiate and religious profession made from grave fear. Cf. c. 185, 542, 1°; 572, § 1; 1307, § 3. Nor is the obligation of celibacy and of the canonical hours contracted by him who, compelled by grave fear, received a sacred order, unless, with the fear removed, he ratified the ordination (c. 211, § 1).

b) Latin civil law. The Italian and French Civil Code render contracts entered from respectively grave and unjust fear null or rescindable. They do not attend to the person who brought in the fear. Nor do they judge reverential fear grave of itself. Cf. art. 1108, 1111-1114 Cod. Ital., 1111-1115 Cod. Gall. Similar are the laws of Latin America, e.g. the Brazilian Code, art. 98-101; Portuguese Code, art. 666; the laws of the Netherlands (1359); of Switzerland (Code of Obligations, 29). Yet this Code, if the other contracting party was in no way to be blamed, obliges the party who suffered fear and wishes to withdraw from the contract to keep the other contracting party unharmed. But the Austrian Code (870-875) does not invalidate a contract made from fear, if the other party neither was an accomplice nor manifestly ought to have known the force inflicted.

c) The Code of Germany, omitting the distinction of grave and light fear, grants to those who have suffered fear an action by which, within a year, from a judge, if he estimates that the parties were moved by unjust fear, they can obtain the nullity of the act (arts. 123, 124, 318).

d) In the U.S.A. contracts from fear (*duress*) are rescindable.

e) By English law, contracts are rescindable at the will of the party who suffered fear, if the fear was instilled by the other party acting or as accomplice. If the other party is not to be blamed, attention is paid only to fear by which reason is disturbed. Contracts which favor the party having authority over another can, when this other petitions, be annulled, unless the father or Superior or physician, etc., demonstrates the full liberty of the other party.

[1] E.g. in order to placate a father, gravely offended and threatening on account of another matter, someone offers himself as spouse to the daughter.

III. Concerning the Defect of Fraud. 1. Notion. Labeo defines fraud: every cunning, deception, contrivance employed to circumvent, mislead, or deceive another (l. 1, § 2 D. *De dolo malo*, IV, 3).

2. Effect from the law of nature. Fraud does not touch a contract unless it begets error; then at least it induces the obligation of repairing damage.

3. Effect from positive law.

a) Canon law, c. 103, § 2, establishes concerning fraud the same thing as concerning fear.

b) Latin civil law. The Austrian Code (871-875), adhering to the law of nature, establishes concerning fraud in proportion to the error effected and to the other party being blameworthy.

By Italian law (1115) and French law (1116), fraud renders an agreement null when the other contracting party is to be blamed, and it gave cause to consent. In juridical acts which are not

bilateral, e.g. in acceptance or repudiation of an inheritance, they admit that an act is vitiated by determining fraud, whoever is guilty. If both parties have used fraud of the same efficacy, "fraud is compensated between each party." (Colin and Capitant, I, p. 70; Pacifici-Mazzoni, II, § 138.) Similar things are had in the Swiss Code of Obligations, art. 28; of Holland, 1361; and in the laws of Latin America. Yet attention must be paid to whether or not fraud effected by either party is required.

For art. 969 of the Code of the Argentine republic bears this: "Fraud affects the validity of acts *inter vivos*, whether it was effected by the contracting party or by a third party."

Therefore observe that because of grave fraud a juridical act can be invalidated even if no substantial error has been admitted.

c) The Code of Germany establishes concerning fraud the same thing as concerning fear.

d) In the U.S.A. the right of withdrawing from the contract is granted to the party who has been deceived by the fraud of the other party.

e) The law of England gives the option of nullity to the party who has been induced to contract by the fraud of the other. Indeed, in certain contracts which are called of the utmost good faith (e.g. insurance, sale of land, attribution of shares of an industrial society), mere concealment or reticence concerning a notable matter, which the other party had a right to know, confers the faculty of rescinding the act (Slater, *Manual*, I, p. 482).

Concerning Lesion. 1. From the law of nature. Lesion, or the damage which a contract brings upon another, easily follows error, but does not constitute in itself a defect of consent.

2. From positive law, can. 1681, § 2, an action for two years is granted to him who has suffered from a contract a grave lesion beyond half by reason of error, for obtaining rescission of the contract. - Civil laws often are silent concerning lesion, or, in only a few agreements, especially in sale and division of inheritances, grant rescission, because of enormous lesion, for some time, in favor of the seller or the heirs. In the law of the U.S.A. lesion is not of itself a cause of rescission. Yet in a case of extraordinary damage, joined with the miserable condition of the injured party, the judge will be able, from equity, to grant rescission.

C. - How a Contract Is to Be Interpreted

— Natural reason counsels that an equitable interpretation of contracts is to be made, and the laws confirm it by their sanctions. Wherefore more than the letter, the intention of the parties must be attended to; - those making agreement are judged tacitly to have admitted whatever things, according to usages or laws in force, individual contracts carry with themselves: whether they knew them, or at least foresaw in a confused way that consequences of this kind pertain to the legal ambit of the contract: thus the obligation of providing eviction, which holds the seller; - because laws are more inclined to loosening than to binding, in doubts, regularly one must respond for the debtor against the stipulator. Cf. Cod. Italicum, art. 1131-1139; Gallicum, 1156-1164; Germanicum, 157, 242.

V. - Concerning the Obligation of Contracts
— A. - Concerning the Principal Obligation

I. Who Are Obliged. 1. Contracts of themselves oblige only the contracting parties and those who hold their place: representatives and successors. - Yet an obligation can be strictly personal, which

does not pass to heirs. That which passes is called real, and affects the patrimony. By the law which we use in Belgium, France, and Italy, any leasing of labor, and the obligation of a contract of society and mandate, is judged personal.

2. When a contract transfers the ownership of a thing, from it there follows for all a general obligation of preserving to each one his own. Nevertheless, a third party who in good faith receives from a donor or seller a corporeal thing or an anonymous title promised to another but not yet handed over, is preferred to him; and a contract concerning an immovable thing, before its registration, effects nothing except between the parties. Thus modern laws are accustomed to establish.

II. From what moment. The obligation arises from the moment at which the contract is perfected (cf. above n. 419). Although, however, a consensual contract is perfected from the moment of consent given and accepted, even before a writing is drawn up for proof of it, nevertheless the parties can defer the mutual obligation until that writing. Therefore one must see whether or not they wished to contract before that. In doubt one must respond rather for liberty. And when the instrument has been made, the obligation must be estimated rather from the instrument than from verbal declarations which were made before or afterward. Indeed, the Austrian Code, § 887, orders these to be disregarded.

B. - Concerning Various Secondary Stipulations

I. Concerning an Added Condition. 1. Notions. Contrary to other stipulations often added to contracts, a condition affects the very substance of consent. For this is the intention of the parties, that they subordinate a juridical change, which is the object of the contract, to some future and uncertain event. Yet the contract itself is perfect; neither party, against the will of the other, can withdraw from it, or make worse the conditional right acquired for the other. Often, though not always (as if you have promised money to someone if he is reduced to poverty), it contains a virtual promise of not impeding the effect. A properly so-called condition signifies a future and uncertain event; and it is suspensive, if the obligation depends upon it; resolutory, if the extinction of the obligation depends upon it. Suspensive: I will give you one hundred if you obtain the prize; resolutory: every year I will pay you one hundred unless my revenues have decreased below ten thousand. - It is called casual when its fulfillment is not in the choice of the one making agreement; to this is opposed the potestative. It is purely potestative: if I shall will; simply potestative, when it is necessarily bound to the voluntary deed of the one making agreement: if I shall have gone to Paris; mixed, when its effect depends both on the will of the contracting party and on the will of another person: if I shall have bought such a house. - A possible condition is one which can be done physically and juridically. Otherwise it is impossible. A condition concerning a forbidden thing is impossible when made in such a way that from it the agreement becomes one of base cause. Here distinguish a reward promised for sin and a penalty promised after sin.

In broader usage a condition signifies a present or past fact unknown to the parties, or even a future certain fact.

2. Effects. a) A purely potestative condition effects nothing. - b) A condition concerning a present or past thing immediately destroys or firms the obligation. - c) A condition concerning a future

necessary thing, of itself, is held as not added. Sometimes, however, from the intention of the parties, it will have force as a day. "If father shall die" often signifies: "after the death of father." - A condition concerning a base or impossible thing of itself invalidates the juridical act to which it is opposed. Nevertheless, if the parties were ignorant that the thing was impossible, and were so disposed in contracting that, with the error discovered, they would have contracted absolutely, the contract will be, in the internal forum, simply valid.

From Roman law the Codes of Italy and France borrowed the norm by which impossible or illicit conditions, added to testaments, would be held as not added (art. 849): which French law also extends to donations. But many modern laws have by no means imitated Roman law. Therefore one must see what the individual laws of the country establish concerning conditions which are judged illicit or impossible. Thus the Brazilian Code, art. 116, holds physically impossible conditions as not written, while it establishes that juridically impossible conditions invalidate the act to which they are added. Nor must one attend less to what conditions are held morally impossible: suppose the condition "provided that the widow shall not have contracted other nuptials."

The disposition by which a condition is held as not added can be observed in conscience, since the law can supply consent itself. Yet if the contrary mind of the testator is established, execution can probably be denied, as something commanded from a false presumption. - What has been said thus far holds in canon law, because of c. 1529. Yet the Code disposes special things, outside the matter of contracts, concerning conditions in rescripts (c. 39-41); in elections (c. 169); in election by compromise (c. 172, § 3); in marriage (c. 1092, 2319); in the resignation of a benefice (c. 1486); in foundations (c. 1492); in renunciation of a parish (c. 2150).

d) A properly so-called condition which is suspensive: before the event, suspends the principal obligation, obliges one to await the event and to abstain from acts which would render the object of the obligation impossible. Wherefore, e.g., a thing conditionally promised cannot be alienated absolutely. Nor can the event itself be unjustly impeded. Here the intentions of the parties must be consulted. He who has unjustly impeded the event is held for damages. - When the event has followed, the contract passes into the absolute. In some Codes, e.g. of Italy and France, it is then judged to have been such from the beginning, yet in such a way that the parties, by their mutual consent, can impede that consequence. But that retrotraction is by no means commanded by the nature of a condition. Wherefore the more recent Codes of Germany (art. 158) and of Switzerland (Code of Obligations, art. 151-156) did not admit it, so that the parties themselves must explicitly declare the will of retrotraction; nor by that will can they prejudice the rights of third parties (cf. Colin and Capitant, II, p. 164-167). - e) A condition which has been resolutory impedes no effect of an absolute contract; but when the condition has been fulfilled, the obligation is destroyed, and the contract is resolved as if it had not been. Therefore that condition suspends not indeed the first *esse*, but the resolution of the contract.

3. Fulfillment of a condition. Of itself a condition must be fulfilled in its proper species or form. An equivalent does not suffice, unless the mind of the one placing the condition bears a different interpretation. Thus once they judged the condition "if you marry" to be fulfilled if the girl became a nun. He who owes conditionally can remit the condition.

In our positive law, in bilateral contracts this resolutory condition is understood: "if the other party does not stand by his promises"; so that the first party can either urge the contract or juridically obtain its resolution from a judge (who can grant a delay) (art. 1165, Cod. Italicus; 1184, Gallicus). The Portuguese Code, art. 709, establishes the same; and the Brazilian Code, art. 1092, gives a similar faculty, yet conceived differently.

II. Concerning an Added Day or Term. 1. Notion. A day or term is a future and certain event (at least certain as to whether, although not always as to when), from which not indeed the obligation but the necessary execution takes its beginning, or after which it ceases.

2. Distinctions. There is distinguished a day from which and a day to which; a day established in favor of the creditor, in favor of the debtor, in favor of each. It is presumed to have been added in favor of the debtor. A debtor who does not pay when he ought is said to be in delay.

A day is established for ending and a day for urging the obligation, so that, when the day arrives, the debtor is not freed but is to be blamed.

3. Effects. A day does not render the bond itself uncertain or future, but merely influences the beginning or end of necessary execution.

4. Renunciation or loss. He in whose favor it was established can renounce the day. Indeed, sometimes it is lost by the law itself, and payment can be exacted before the day, as if someone is compelled to make cession in court.

N. B. - In no law, after the day has arrived, is the day judged to be drawn back to the moment at which consent was given. Wherefore laws which do not even in conditions admit retrotraction of itself equate the day from which with a suspensive condition; the day to which with a resolutory condition. Thus art. 162 of the Code of Germany. It also has, in arts. 186-193, norms concerning the computation of time which are sufficiently similar to the norms afterward added in the canonical Code, c. 31-35.

III. Concerning an Added Mode. 1. A mode is a certain burden or charge imposed on him who acquires a right from the contract. E.g. I give you a thousand, but you will take care that every year five Masses are celebrated for me.

2. The effect must be measured both from the mind of those making agreement and from positive law. For a burden can sometimes be constituted without obligation of conscience: "I give you one hundred, but for honorable recreation"; sometimes under the obligation of mere fidelity: "I give you one hundred, but you will study." When from the intention of beneficence something is promised or given, with a mode added which is for the utility of the promisee, he will for the most part be held by no obligation, at least of justice. - Sometimes there is a strict obligation of justice of observing the mode, yet in such a way that, when it has been violated, the principal stipulation nevertheless stands, and, for the mode neglected, satisfaction merely must be made. - Sometimes, when the mode has been violated, the principal act itself is judged to be revoked: then the mode ceases in a resolutory condition of the donation, legacy, etc. Cf. Molina, *Iust.*, I, d. 208; Lugo, *Iust.*, d. 23, n. 111. - One must see what the laws bear, what the parties wished.

An accessory mode which is base or impossible, unless it is imposed as a condition, considered under natural law, is held as not added, and the act is simply firmed.

This is very worthy of note for conscience: that a donation or legacy made under a mode which is not fulfilled can be valid, indeed of itself is not invalidated. This more absolute firmness distinguishes a mode from a condition.

IV. Concerning an Added Cause. 1. Notion. A contract is said to be made under a cause when the end on account of which something is given or promised is explicitly added: "I give you one hundred so that you may buy books, because you are poor."

2. The juridical effects are to be estimated as in a mode. The principal intention of the stipulator under the cause must be attended to.

Thus a prince who gives money to a servant so that the servant can sit upon a horse, if he sought for himself the adornment of a servant riding, will be judged to have obliged the servant to have a horse; otherwise if he wished merely to consult the convenience of the servant. Hence he licitly keeps for himself money given for taking a carriage for carrying on business in a distant place, who, depriving himself of that convenience, made the journey on foot. But the vow of poverty will stand in the way so that a religious, using similar reasoning, may not expend otherwise the money which he thus saves.

V. Concerning an Added Demonstration. 1. Notion. A demonstration is had when, besides the necessary indication of the object, a more accurate description of a quality of the thing, of quantity, is added. E.g. I sell you this field, which consists of one hundred jugera.

2. Distinction and effects. According to the mind of those making agreement, the description can be demonstrative or taxative. If it was demonstrative, neither will falsity harm the contract, nor must a defect be supplied or an excess removed. If it was taxative, the error at least must be corrected, or the contract falls, if from this it appears that consent toward the same object was lacking.

A designation is judged to have been made taxatively by him who promises the thousand francs which are contained in such a chest; but demonstratively by him who sells such a field and describes it as consisting of so many jugera. But attention must be paid to positive laws.

VI. Concerning an Added Disjunction. 1. Notion. A contract is made under a disjunction when some option between two performances is left.

2. Distinction. An option can be established in favor of the debtor and also in favor of the creditor. When it has been established in favor of the debtor, a facultative obligation must be distinguished from an alternative one.
3. Effects. An obligation is called facultative when the stipulation was made concerning one thing only, but it is open to the debtor to substitute another in place of the thing promised. Then, when the promised thing perishes, without fault and delay of the debtor, nothing is owed.

When a disjunctive stipulation has been made concerning each thing, the obligation is called alternative. Then the obligation is not destroyed unless both things have perished, without the fault of the debtor and before he has been in delay. Nevertheless, in a gratuitous promise, as also in a vow, the destruction of one thing can render the execution of the contract or vow grave or burdensome, so that the one promising can withdraw from the contract. If the option has been established in favor of the creditor, when one thing perishes, the creditor can of himself seek either the other thing or the price of the thing which has perished.

The debtor will have to repair damages for blameworthy delay according to the general rules.

VII. Concerning Added Confirmations. To strengthen the force of agreements, principal stipulations are fortified either by a promissory oath, or by a penal clause, or by earnest money.

1. Concerning the promissory oath, treatment was given above, n. 193-204.
2. A penal clause, or penal mode, or stipulation of a penalty, can be added to a contract: a) to urge its execution, although no damage arises from delay or omission; b) to estimate beforehand and by mutual consent the damages which either defect of execution or delay are foreseen to bring.

A penalty of the former kind is not contracted without fault: and indeed theological fault, unless the parties have disclosed another mind. According to the more common opinion, it is not owed unless it is sought, and some permit payment to be deferred until the sentence of a judge.

The other penalty, if it appears moderate, is owed in conscience as often as damages would have to be repaired; nor must one now attend to the damages truly following, since an aleatory estimation has been made.

If it was promised for omission of execution, the creditor can urge execution in place of the penalty.

3. Earnest money designates certain things handed over by one party to the other on the occasion of some contract, whether as proof that the contract has been made: probatory earnest money; or for firming its obligation by the sanction of losing the earnest money: confirmatory earnest money; or for giving place to repenting and withdrawing from the contract: penitential earnest money.

VI. Extinction of Obligations

— The following extinguish an obligation from a contract:

I. Payment of the debt. 1. What it is. Payment, here generally, signifies the performance of every thing owed, or the execution of an obligation, while more strictly it is the payment of money owed.

2. Who can pay. Payment supposes a capable debtor. When there is question of a thing to be rendered, the one paying must be owner of the thing and have capacity for alienating it. The handing over of another's thing is, of itself, absolutely null (saving what was said concerning acquisition through possession in good faith, from positive law); handing over made by an incapable person is relatively null, as we indicated above in n. 415.

But any capable person whose interest is involved can pay: e.g. the buyer of a house subject to a hypothec, a surety; indeed any other person, if there is question of a performance sought without regard to the person.

3. To whom payment is to be made. Payment of itself is to be made to a capable creditor, such as a minor by age is not, or to the person who represents the incapable person. And, in French law, payment made to a minor by age is simply null, without consideration of lesion. Laws also define how acceptance of payment can be imposed upon an unwilling creditor.

4. What must be paid. That which is owed must be paid. And indeed: a) saving a peculiar stipulation, the whole at once, not by successive parts. Yet there are exceptions to this rule. Thus, in French and Italian law, when an inheritance is divided, debts are divided among the heirs, who therefore will individually have to pay only a part of the debt; by compensation (of which presently) part of the debt can be extinguished; finally the judge himself can prudently grant to the debtor the benefit of partial execution. Cf. Colin and Capitant, II, p. 76 ff.; Pacifici-Mazzoni, IV, p. 530 ff.

b) The performance must be, according to the nature of the thing and of the contract, of the promised quantity or of the promised value. When money is to be paid, positive laws are accustomed to establish that the sum owed is to be counted out either in metallic money, or in "values" which the law has equated with money. Observe, however, concerning metallic money, that coins below 5 lire are so struck (lest they be too easily transferred elsewhere) that the true value of the metal is far surpassed by the nominal value. Wherefore the creditor cannot at all be compelled to accept in payment, beyond the sum defined by law (suppose 5 or 50 lire), money of bronze or nickel, indeed silver coins of one or two lire. Values which are equated with money are customarily banknotes; sometimes also, as in Italy, titles of public credit.

5. The modern difficulty. But today, in more than one region, the right of demanding immediate conversion into metallic money, which is written on the notes (*pagabile a vista, al portatore*), is suspended. A suspension of this kind completely changes the nature of the note: previously it represented true metallic money and possessed its value, indeed not rarely, because of facility of transfer, it became of greater value than metallic money; now it represents a credit forcibly conceded to the State by all who possess banknotes. But the value of credit is measured by the confidence which the debtor enjoys. This already is diminished because of the coercion itself. Add the faculty which the State has of infinitely increasing its debts by multiplying banknotes, so that soon the true value of those notes clings far below the value written on them, while before it agreed with this value. In a word, a debt-note "to the bearer" has become money properly so called, but paper money.

In this state of things, a grave question of conscience arises: whether or not it is lawful to extinguish true debts by counting as true the nominal value written on the banknote. If the law permits this to be done, does conscience also permit it?

Concerning this matter these things seem to us to have to be said.

1. If the debts were contracted recently, an affirmative response can easily be given, since the debt is paid in the same circumstances in which it arose. Therefore there is no one for whom there is cause of complaint.
2. Bankers and money-changers, since in their daily business they must receive payments made according to the norm of law or nominal value, can also in paying their own debts stand by positive law. Otherwise they would fall into certain ruin. Wherefore that mode of acting is conceded to them by the common estimation which governs and defines just prices.

But what of private men?

a) First of all, in the prices of all things increased today, one must separate the increases which are to be attributed to the true dearness of things and the increases which are to be attributed to corrupt money. We are concerned only about the latter increases. For although, because of the greater dearness of things, the same sum of true money is less useful than before, nevertheless, considered from justice alone, a greater sum will not therefore have to be paid, because that circumstance is extrinsic to the money which is paid. Add that it is well enough known that prices not rarely vary, so that, in making agreements, the parties have tacitly admitted that risk; and besides, in daily business, most people in selling things or in leasing works find a source from which they compensate in some way for purchases to be made at a dearer price.

Nevertheless, deliberately we said, "considered from justice alone." For equity and a grateful mind sometimes will persuade one to act in a different way. Suppose someone who, with a beneficent intention, bought the house of religious punished with exile, at the same time promising the religious that if it should happen that they return to their fatherland, they could buy back the same house for the same price. Will it be consonant with equity and gratitude that the religious recover their house by handing over to the benefactor money whose present utility is greatly diminished?

Indeed, in cases of an unforeseen and excessive variation of price, natural justice itself can require that either the contract be rescinded or, whether by friendly settlement, or even by the authority of a judge (if the law permits this to the judge), be reduced to equity.

b) But, now neglecting the consideration of the dearness of things itself, let us examine the more difficult case concerning paying a debt, e.g. concerning returning borrowed money in a region where already only paper money has been accustomed to be handed over, while the debtor had received metallic money or something equivalent to it.

If between metallic money, e.g. gold, and paper money, the difference is not excessive, the law can consult common peace and facility of commerce by establishing a plain rule of payment according to nominal value: public utility can be purchased by some private detriment. But beyond certain reasonable limits, this power of law does not seem to be extended. For no more than by the law of prescriptions could the legislator, as it were, reward bad faith, can he by rules of payment despoil citizens of their goods. Nor could the mind of the legislator have been that he who gave money of true value must be content by receiving paper money which morally has no value, as happens today in several regions.

But between cases in which the value has decreased almost to nothing and cases in which money has remained of the same value, there are several intermediate cases concerning which it will be less

manifest what justice requires. That we may suggest some norm, this seems able to be established: the rule of natural justice must be observed, which obliges one to pay things of the same value, when payment of an old debt made according to nominal value would bring damage to the creditor beyond the fourth part.

Nor does it help to object that it can happen that the debtor is also a creditor to whom a lesser value is repaid by others. For it is not lawful for you to steal because you suffer theft.

Practically, however, account can be taken of those who offer the more benign opinion, at least when paper money retains a notable value. Then no obligation can be imposed as truly certain. But if someone should wish to pay a debt of gold money or its equivalent with money which today represents morally nothing, the inequity seems to us too manifest for it to be tolerated, outside extraordinary cases.

Finally, this cannot be passed over: laws concerning the payment of debts almost do not speak except about gold and silver coins, so that present-day circumstances seem by no means comprehended by the intention of the legislator. Hence those laws make less secure those who wish to use them for making extraordinary profits against natural equity.

II. Novation,. i.e. the transfer and transfusion of a prior debt into another obligation (L. 1. D. *De Novat*. XLVI, 2). It can be of threefold kind, according as the object is changed (instead of an ox, pay 400), the debtor (instead of Titius, Sempronius will pay), or the creditor (what you owe me, pay to Caius).

This is the effect of novation: rights and duties are to be measured from the new title which is substituted for the prior one. In a similar way, when a just sentence has been pronounced concerning a litigated matter, now the titles which came into controversy are not to be considered, but in their place the sentence has succeeded as the sole valid and efficacious title: the sentence has pronounced this as the law. Wherefore the sentence, as they say, effects novation. And in a similar way, when, because of an equal doubt of fact, we say that a thing must be divided between two who remain doubtful concerning their right, a certain principle of justice concerning the preservation of equality between persons eliminates and destroys the probable reasons because of which someone might say: perhaps one has less than what he ought. What is his own, neither more nor less, each obtains by force of a novation of this kind.

III. Remission of debt made by a capable creditor.

IV. Compensation, "which is the contribution of debit and credit between themselves" (L. 1. D. XVI, 2). It is had as legal compensation when, because of a debt of a similar thing, liquid and demandable, by which the creditor is held, both debts are reputed paid. Facultative and judicial compensation will exist when, with some condition of law lacking, by private agreement or by the authority of a judge, there is made "a contribution of debt to debt and a comparison in the force of payment" (Calvin's *Lexicon*).

V. Confusion, which is had when one and the same person would have to sustain the person of creditor and debtor: e.g. if the debtor becomes heir of the creditor. For no one can owe anything to himself from justice.

VI. Loss of a certain thing which is had. Of a certain thing, I say; for a genus never perishes. If the thing perished by the fault of the debtor, or if the debtor was in delay, or if he contracted an obligation of standing for a fortuitous event, often, at least from positive law, damages will have to be repaired.

VII. Rescission of the contract.

VIII. A resolutory condition which has arrived. Then things are restored "to the state in which they were before," as if the obligation had never existed.

To this pertains the option which positive law gives in bilateral contracts, against the party which has not stood by its promises, as was said at the end of n. 428.

IX. Liberative prescription. Cf. above, n. 400 ff.

N. B. Sometimes causes exist on account of which, whether from the law of nature or from positive law, execution can not indeed be omitted, but deferred. Cf. what is to be said concerning restitution.

You ask what is effected by circumstances which, beyond expectation, have arisen or have ceased?.

These demonstrate an error of precision. Wherefore the things said concerning error can prudently be transferred here.

Standing by the law of nature, if the cause is intact, or if damages are repaired, revocation of consent can be admitted where the circumstances reasonably have force as tacit conditions, or where the false foreseeing of them at least gave cause to the contract. A gratuitous contract will be dissolved more easily than an onerous one. Yet betrothal, which ought to flow from mutual love and prepares an indissoluble bond, requires easy retraction because of circumstances, although it is an onerous agreement.

On the contrary, consent into a contract by which a state firm and perpetual of itself is introduced is judged to be especially absolute.

But carefully distinguish the will which now is changed from the will which never would have been if such a thing had been known or foreseen. A present change of will is juridically inefficacious. Cf. Lugo, *Iust*. d. 22, n. 90.

From positive law, changed circumstances effect nothing of themselves, if you except donation, as will be explained in its proper place.

Article II. - On Various Contracts in Particular.

I. On Simple Promise

The very frequent use of promises, and the multitude and variety of doubts to which they give place, show how necessary it is that the argument concerning promises be truly familiar to moral theology. Wherefore an accurate exposition of it is demanded by the very intention of our writing.

I. Preliminary Notions. Three things, in the first place, are to be distinguished: a resolution, a promise of fidelity, a promise of justice or contract of promise. A resolution is merely a decree of the will by which, with respect to another, nothing has been taken away from the freedom of the will; a

promise, an obligation having been undertaken with respect to another, differs from a resolution. But to another there can merely be pledged fidelity, or a right can be conceded to the promised performance. Fidelity, here, means the quality which makes a man worthy to be believed and trusted. He who pledges fidelity wills that the other to whom he promises believe and trust him: then commerce among men, which rests upon mutual fidelity, requires that the one, by carrying out what has been said, avoid the deception of the other. This is the obligation of fidelity, which is not grave.

But he who concedes a right to another has alienated his own liberty, i.e. he has permitted into another's hands the liberty of doing otherwise. This is the obligation of justice, to which satisfaction must be made, by execution of the promise, under grave or light obligation, according to the capacity of the matter and the intention of the parties.

But there can be promised an act or an omission, or a thing. Hence promise is distinguished as personal and real. A personal promise is of one's own act; a real promise is of a thing, or even of an act with respect to which it does not matter by whom it is performed.

II. Definitions. 1. A simple promise can be described in a confused way as: a deliberate declaration, made to another who knows and does not resist, of a gratuitous performance useful to the other.

We call the description confused, because it does not distinguish the contract of promise from a promise obliging from fidelity.

It must be deliberate, because, as was said concerning a vow, n. 209, a semi-deliberate promise induces no obligation: that deliberation is required which is sufficient for sinning mortally.

To another who knows: as long as the other is ignorant, not even an obligation of fidelity has been undertaken. For this obliges one not to deceive the other; but he who is ignorant of the declaration can suffer no deception from a changed intention.

And not resisting. For he who positively refuses the declaration expects no execution, and therefore cannot be deceived.

It is called gratuitous, insofar as it is not made because of another's promise or debt.

Useful to the other. For the law of nature itself, by its positive prohibition, invalidates a promise harmful to another; and it does not sanction one that is wholly futile.

Among harmful promises we must place also dishonest and illicit promises.

But it is repugnant to the divine holiness that it acknowledge a bond of iniquity.

Indeed, a prodigal promise, as such, is judged so illicit that it probably does not oblige (St. Alphonsus, L. 6, n. 851, against Lugo, *Iust.* d. 18, n. 60. 61).

Standing by the law of nature, the other to whom the promise ought to be useful can be the contracting party or even a third party. For the bond of charity effects that what is done for my neighbor ought to be judged as done also for me.

The promised performance can be real or personal.

2. The contract of promise can be described as: a deliberate and gratuitous concession of a right, made to another accepting, for obtaining a useful performance. For by contract a right is

transferred. But because no one acquires a right except willingly, the obligation does not arise before the other's acceptance. But when a promise made by letters is judged perfected, we saw above, n. 419. 420.

Positive laws, since they do not attend to the general bond of nearness, are not accustomed to sanction promises which are not useful to the other contracting party. But that utility can be created by an added penal clause or by a donation made to the promisor. Nor do laws directly consider a promise from mere fidelity.

III. The Obligation of a Promise. 1. As to the nature of the obligation: a) a strict obligation of justice is not to be presumed; it is more easily had in mutual promises and in written promises than in gratuitous verbal ones; b) if the execution of a definite promise, already at the very moment at which it is promised, seems necessary for avoiding notable damage, even a verbal promise will be judged to oblige from justice: as if you promise a determined sum for making some expense. But even then the force of the promise is reasonably, and rather strictly, to be taken. He who, for example, has promised definite money for the education of some young man, unless he has expressly promised more, is not judged to have bound himself to pay that money through several years (until the education is completed); c) a promise little defined, or one which can be a courteous response, will not oblige the promisor even under fidelity. Tanquerey, III, 678.

You will ask whether an obligation of fidelity can be converted into an obligation of justice by reason of damage that will follow from non-execution. There are those who seem to affirm this. But we think it must be said thus. Fidelity fictitiously given, with foresight of damage of this kind, would be a harmful act whose consequences would have to be repaired from justice. But if I sincerely interposed my constancy, the other who relies on it knows that I can change my intention without injury. If that harms him, let him impute it to himself, because he gave faith to me. My obligation is not changed on that account. But after I have changed my will, I shall be bound from justice to make the other more certain, if my silence would be the cause of a harmful deception. In this respect even the judge of the external forum can judge concerning a promise by which someone's mere fidelity has been pledged.

2. As to the gravity of the obligation, this of itself is light if the obligation is of fidelity; but even when it is of justice, they estimate grave matter as four times greater than grave matter of theft.

Only an obligation of justice permits occult compensation.

IV. Cessation of the Obligation. 1. Besides the general modes by which the obligation of a contract is taken away, it must be noted that the obligation of a gratuitous promise ceases because of an inconvenience on account of which, if it had been foreseen, the promise would not have been made. Here again, damages which perhaps will come to the promisee from this cannot be imputed to the promisor; yet it is equitable that, in weighing the inconvenience, he take account of the grave damage which the other will suffer.

2. When the promisee has died, the promise will be extinguished if the intention of the promisor regarded only the promisee; but the contrary, if he wished to be beneficent to the family itself.

But when the promisor has died, a promise of a personal act has become impossible, and therefore is taken away. But a real promise, if it was one of justice, burdens the patrimony and therefore the heirs. Otherwise if it was one of fidelity, unless the promisor absolutely willed that the things promised be completed by execution. For then he is judged to have bequeathed the performance to the promisee, so that the heirs must fulfill the promise from justice. That legacy, which for pious causes could be valid because of canonical form, will nevertheless, from positive civil law, be invalid, unless it is contained in a testament of civilly suitable form, or unless the law itself sanctions transmission of the obligation to the heirs. Thus we said that what Lugo, *Iust*. d. 23, n. 98, says too absolutely, in our judgment, concerning the translation to heirs of every real promise, must be tempered.

How matters stand if, before the promise has been accepted, the promisor or the promisee dies, was said above, n. 421.

3. Concerning positive law we shall note only this, that in more than one law it is now sanctioned that a promise holds the one making the declaration even before acceptance. Cf. what was said above, n. 418; cf. also Pacifici-Mazzoni, IV, p. 252, note b), Colin and Capitant, II, 270.

Jurists also labor in explaining the certain obligation which promises made publicly through newspaper announcements or in a similar way, and also titles to the bearer, bring forth, because the declaration has been made to persons not determined. Cf. Pacifici-Mazzoni, IV, p. 78 ff.

The Brazilian Code assigns title VI to obligations which arise from unilateral declaration. Chapter I treats of titles to the bearer; chapter II of promised reward (cf. art. 1505-1532).

V. Corollaries. 1. Unless a promise has been made from justice, the promisee, neither while the promisor is living nor after his death, can satisfy himself secretly. If, however, the promisor has been overtaken by death after an absolute promise was made, the promisee who secretly took the thing promised to him seems able to be excused from restitution, on account of the probability which St. Alph., L. 6, n. 720, ascribes to an opinion of this kind. Cf. Aertnijs-Damen, I, 881. Yet the reason is not to be sought from this, that every promise would oblige from justice (which opinion St. Alph., l. c., undeservedly ascribes to Laymann), but rather because Lugo and several after him admit that the object of an absolute promise is virtually bequeathed by the deceased.

2. Let us not confuse a resolution with a promise; an intention of donating or bequeathing, with a donation or legacy. Domestic servants, not rarely, relying on certain benevolent words of their master, think that they have a right either of demanding from the heir, or of taking, what they were hoping to obtain by title of legacy. But unless the master by words formally or equivalently said, "this is yours," "I give this to you," he made no donation by which they acquired a right; unless he said absolutely "I will that after death such money or such a thing be yours," but merely spoke in this or a similar way: "I shall not forget you; you will be satisfied," they cannot rely even on an informal testament so as secretly to take something for themselves as remunerative. Wherefore a servant to whom the master has manifested an intention of a legacy has no right if the master, overtaken by unexpected death, made no testament. Nor is the heir bound to believe a servant affirming an absolute will of the deceased

to donate or bequeath; indeed, since there is no question of a pious cause, he can neglect a legacy which is not contained in a testament of civil form.

Yet it would have to be said otherwise if the servant, relying on the words of the master, had asked for or accepted either no wage or only an unequal wage for his labor: for then the services were as if conditionally gratuitous. And it is altogether fitting that the heir, according to the presumed or at least reasonable will of the deceased, compensate faithful services with an equitable remuneration.

II. On Donation

Concerning donation, the things which we warned above concerning a gratuitous promise hold: it is an argument concerning which the moral theologian is so often consulted that he ought to know it well.

I. Notions. 1. Definition. Donation is a gratuitous contract by which one person, the donor, from an intention of liberality, concedes to another, the donee, his own thing as to dominion, without any obligation of restoring.

It is a contract less properly so called, if you have defined contract in such a way that it must produce an obligation, and the law admits the translation of dominion by consent alone. For then donation transfers a right, but of itself begets no obligation except that common obligation of reverencing an acquired right. Wherefore in certain Codes, for example in the French (893) and Italian (1050), it is placed outside contracts.

By the concession of a thing already possessed by the donor, donation properly such is distinguished from various acts by which someone makes another richer, but without diminution of his patrimony, as for example through gratuitous renunciations, which are also called indirect donations. Cf. immediately below.

By the words without any obligation of restoring, donation is distinguished from mutuum, by which also one's own thing is handed over into dominion, but with the obligation of restoring it or an equivalent.

2. Divisions. According to its various cause, donation is distinguished as between the living and by reason of death; simple and allective or remunerative.

Donation by reason of death is a contract, revocable until death, by which only after the death of the donor is the thing assigned to the donee. Therefore it differs from a testament only insofar as it is a contract, and therefore must be accepted; but it differs from an irrevocable donation which someone dying has made to another; indeed from a donation between the living under a suspensive condition: if I die, or a resolutory condition: unless I recover health.

An allective donation is made under hope of another's action or performance. Yet it is absolute. Wherefore, when the hope has been frustrated, he can repeat nothing.

A remunerative donation has its impulsive cause in the good deeds of another. Wherefore it is commended by equity and is protected more by the favor of law.

According to external form, donation is distinguished as open and disguised under another onerous contract; direct and indirect; verbal or written and *brevi manu*.

When laws, as the French law, admit that for the validity of a disguised donation it is sufficient that the form of an onerous contract be clothed, the external appearance must be that of an onerous contract. Thus, he who merely writes on paper: "Let it be valid for one hundred francs" (*bon pour cent francs*), which he thus wishes to give, will make an informal instrument, since nothing is said about a burden; but, that he may satisfy the condition of form, this must be added: "I acknowledge that one hundred francs are owed by me to Titius." Cf. Colin and Capitant, III, p. 770.

Indirect donation takes place when someone gratuitously makes another richer otherwise than by subtracting a thing from his own patrimony. This happens by renouncing, in favor of another, an inheritance or legacy; by remitting a debt; by stipulating something for a third party; by transferring to another a title of credit inscribed in one's own name.

Donation *brevi manu* takes place when a movable thing is handed over gratuitously to another to be possessed, without a distinct agreement.

But observe that the delivery which is essential in donations *brevi manu* can be made formally or virtually, either by confirming the possession which the donee already had, or by pointing out the thing which is given, if it cannot easily be moved from its place, or by handing over the keys of the chest where it is kept; or by bringing it in some other way under the power of the donee (Cf. Aertnijs-Damen, I, 888, note).

According to various amplitude, donation is distinguished as absolute and conditioned; pure and mixed with a mode, or burden which is imposed on the donee.

II. Capacity and Faculty of Giving and Receiving Donations. 1. From the law of nature he validly donates who, master of himself, has or can have what he intends to give: he licitly donates who is moved by an honest cause, and, avoiding also a prodigal dissipation of his own thing, brings no prejudice to another's right.

Therefore a debtor cannot without injury make those donations by which he becomes unable to pay. He who has induced the debtor to make such donations participates in that injustice. But what concerning those who, conscious of the present or future inability of the debtor, have simply accepted those gifts? The matter is disputed. There are some, perhaps most, for example Aertnijs-Damen, I, 884, who forbid this, because they help the debtor in an unjust action. Yet, because the debtor remains master of his own things, because he has obligated his patrimony but not individual things to creditors, they seem merely to use another's sin for a gain honest in itself. They violate no right in the thing. Acceptance, as such, is not unjust. Nor do they have a positive duty of preventing the effect of an action begun, or of the sin of the debtor, which the debtor has already committed alone. Therefore they seem able of themselves to be excused. Nor, of itself, does charity stand in the way, which does not oblige with grave inconvenience. Thus Molina, *Iust*. d. 328, n. 15; Lessius, *Iust*. c. 20, n. 168; d'Annibale, II, 123.

Much less is someone prevented from receiving an inofficious donation, i.e. one by which the legitime of the children is injured. For as long as they live, parents are not bound from justice to observe that legitime; nor will they sin against piety itself, if they have a reasonable cause for neglecting it, especially since several laws constrain too much the liberty of parents. More severely, therefore, in our judgment, Aertnijs-Damen condemn for grave sin parents who gravely injure the legitime.

But creditors and children will be able to use the protection of civil law for impeding the effect of donations of this kind.

To guardians and prelates, from the goods which they administer, no bounties are permitted except moderate remunerative ones, and alms according to the faculties and nature of the community. And Constitutions are to be observed by prelates (cf. c. 537).

Nor can the husband alone make donations from common goods which by positive law are prohibited to him.

2. Capable of receiving donations is of himself anyone who is master of himself. And when there is question of pious causes, the capacity of persons is to be estimated from canon law.

III. No peculiar form is prescribed from the law of nature. Nor is delivery necessary. Yet the donation will not be perfected before it has been accepted.

St. Alphonsus, L. 3, n. 726, reports, from the Salmanticenses, that a donation made to pious causes or to the church by any private person can be accepted in the name of that cause by anyone; as if by one managing business for the church, as Aertnijs-Damen has it, I, n. 891. Yet we note that management of affairs has place only when the master himself cannot act by himself. Besides, in order that a donation can be accepted by someone in the name of another, it is necessary that the donor wish to conduct the business with that person. Wherefore it does not seem that someone can accept a donation in the name of the church except when the donor offers the thing to him to be accepted in the name of the Church. Such will be the case, for example, of a religious, or of a pastor, to whom something is offered gratuitously to be possessed with a view to religion or the parish.

Outline of Positive Laws. We are treating only of civil laws, because c. 1529 wills that, in ecclesiastical matter, with the same effects, those things be observed which the civil law in the territory has established concerning contracts, unless the statutes are contrary to divine law or unless something else is provided by canon law. But no special canonical disposition occurs except c. 1513, § 1: "He who by natural and ecclesiastical law can freely dispose of his goods, can leave goods to pious causes, whether by an act between the living or by an act by reason of death."

1. Notion of donation. The juridical notion of donation is circumscribed by the donation which we have called direct, so that, unless something else is expressly provided, peculiar dispositions are not to be transferred to renunciations and other indirect donations. That they might signify that limited notion, certain Codes have introduced the removal of a thing from the patrimony of the donor into the definition itself in this or a similar way: "Donation is judged to be a contract by which someone, with liberal intention, from his own patrimony, transfers goods or utilities to another accepting" (art. 1165 Brazilian Code). Cf. Code of Germany art. 516; Swiss Oblig. 239.

Moreover, when, as more often today, a real right is not transferred by consent alone, the contract of donation is rather a contract by which the donor obliges himself to transfer gratuitously to another something which existed in his patrimony. Thus, for example, in Holland. Cf. Duijnstee, n. 238.

2. Donation by reason of death is not acknowledged by most laws, whether they formally exclude it, as the Italian Code, 1050; French, 893; Dutch, 1703; Mexican, 2601; or assimilate it to a legacy, as the Austrian, 956; German, 2301; Spanish, 620; Portuguese, 1157; Peruvian, 628; or pass it over in silence, as the Brazilian, Swiss. - In the laws of England and the U.S.A. it is admitted.

3. Form of donation. Donation, in not a few laws, is a solemn contract, so that several require a public instrument: thus the Italian Code, 1056; French, 931; Dutch, 1719. But, provided the parties are capable, a donation covered with the cloak of an onerous contract is said to be valid. The Brazilian Code, 1168 compared with 131, requires writing, but it can be private, when movable things are donated or an immovable thing which does not exceed "one conto de reis" (a thousand thousand reis).

The form required and sufficient for donating movable things is also often delivery. Donations *brevi manu* are admitted indefinitely in France; in Austria, 943; in Holland, 1721; only those of moderate value, in Italy: which limitation is expressly had in the Brazilian Code, 1168. The German Code requires a promise of donation which has been made by public act (before a judge or notary), but in such a way that execution heals the defect (518).

4. Capacity of persons. Of itself, only the donee can accept a donation. Yet except persons who represent minors or those interdicted. Several laws, as we have already seen, permit even a minor to accept donations burdened with no obligation. The donee must at least be conceived; and if he is born not viable, the donation falls. Yet sometimes they permit a donation to be made to children to be born immediately from a living person (C. Ital. 724. 761). Besides absolute incapacities, relative ones are distinguished, for example between spouses, between guardian and ward, until accounts have been rendered. A notary cannot be the donee in the instrument which he himself writes (Cf. Cod. Ital. 771. 772). That incapacity is to be remembered by which, in some laws, for example in the French Code, 909; Dutch, 953; physicians, pharmacists, and ministers of worship (i.e. both the confessor and the one who confers the last sacraments) cannot receive donations or legacies from a person whom they care for, during his last illness, unless they are closely joined or unless the donations are remunerative. In several laws, illegitimate children, when they concur with legitimate ones, can receive nothing beyond what is destined to them by law. And the prohibition is more severe for spurious or adulterine children. - Finally moral persons, generally, cannot accept donations without the assent of public authority. Certain ones, however, for example syndicates, not rarely are treated more benignly. - But observe that, by force of c. 1513, the capacity of giving to pious causes is to be estimated from natural and ecclesiastical law.

5. Objects of donation. Generally, by acts between the living, future goods cannot be given. In the Brazilian Code a universal donation of goods is invalid unless the donor reserves sufficient sustenance for himself (1175).

6. Impossible and illicit conditions in the French Code, 900, are held as not written; while in the Italian Code, 1065, they invalidate the donation. Nor are the same conditions everywhere held as licit or illicit. In a peculiar way attention must be paid to conditions which regard the moral

or religious order, as if instruction in a definite religion is required. A condition of this kind is sometimes inefficacious, sometimes valid, sometimes can be corrected by a judge.

7. Revocation. Of themselves donations are irrevocable. Yet causes of revocation are inserted in Codes. Most frequent is peculiar ingratitude; frequent also is the birth of children of a donor who had no offspring (This cause is not admitted, for example, in the Canadian Code Q.). In the Code of Germany, 528, supervening need of family property is also admitted. From revocations of this kind remunerative donations are customarily excepted. A clause is permitted by which, if the donee, either he alone or he with his children, dies before the donor, the gifts return to the donor (Italian Code, 1071).
8. Collation. In several laws donations made are judged as anticipated legacies, so that the capital donated must be counted in the hereditary mass. Cf. what is to be said where inheritance is treated.

Effect of Those Laws in Conscience. Those laws, insofar as they are just, oblige conscience, yet in such a way that until a judge has intervened, someone can give and receive according to the norms of natural law. Nor is he bound to disclose the things which he has received. Yet, when legitimately questioned, he is of himself bound to issue a sincere oath.

But what if a donation to pious causes is of a civilly unsuitable form?.

That there may be no occasion of confusion, we recall that here we are speaking not of testaments or legacies, concerning which one will have to speak differently, but only of donations which are made by contract. Therefore:

1. Because c. 1513 explicitly permits that those who have natural and ecclesiastical capacity leave their goods either by an act between the living or by acts by reason of death, nullity sought from the fact that civil law does not admit donations by reason of death does not seem able to be urged in conscience.
2. But because c. 1529 wills that, in ecclesiastical matter, those things be observed which the civil law in the territory establishes concerning contracts, we think, until no authentic declaration has intervened, that those cannot be disturbed who do not think themselves bound by a donation-contract in which the substantial civil form is lacking. Yet there are those who think that, from the mind of the legislator, what c. 1513 establishes concerning the capacity of persons can and must be extended to the form itself: this, in ecclesiastical causes, is to be estimated according to canon law. Cf. Duijnstee, n. 242.

N. B. Conditions of validity and juridical conditions of proof are to be carefully distinguished. In the forum of conscience a valid donation altogether exists, but one whose juridical proof is not had.

III. Commodatum and Precarium

I. Notions. Commodatum (*prestito di uso*) is a contract by which some thing, as to use alone, is conceded gratuitously, for some certain time, explicitly or implicitly determined.

By precarium a thing is conceded for use gratuitously in the same way, but until the one conceding explicitly or implicitly asks for the same thing back.

II. Obligations. 1. The lender-for-use must hand over the thing affected by no harmful defect concerning which he does not warn the borrower-for-use. He must permit use through the whole promised time, and repay to the borrower-for-use expenses made from urgent necessity lest the thing perish.

If, beyond expectation, he himself needs the thing, from the law of nature he can prefer himself to the borrower-for-use in an equal cause. Several laws sanction this; but not rarely in such a way that the judge has discretion concerning the necessity that has arisen. Thus the French Code, 1889; Italian, 1816; Brazilian, 1250.

2. The borrower-for-use must keep the things loaned-for-use diligently as his own, bear the expenses of preserving the thing, employ the thing only for the use expressly or tacitly agreed upon; and at the end of the commodatum return the same thing with fruits and increments. Of himself he cannot give it to another to be used.

The obligation of answering for fault, both because of delay in restoring and because of violation of his obligations, is made stricter by positive laws, so that sometimes he has to answer for the fortuitous event itself. Thus the Code of France, 1882; of Italy, 1810; of Brazil, 1253, oblige him in a fortuitous event, if, in a disaster in which one or the other had to perish, he preferred his own thing to the thing loaned-for-use.

In French law, 1883; Italian, 1811, he is presumed to have undertaken the fortuitous event upon himself, if, at the beginning of the commodatum, the value of the thing was estimated.

Those obligations will bind conscience after the sentence of a judge. Beforehand, the general rules concerning answering for fault are to be observed. Cf. below, where delict and quasi-delict are treated.

IV. Mutuum and Usuries

1. On Mutuum. 1. Notion. Mutuum is a real contract by which dominion of some fungible thing is transferred from the lender into the borrower, with the obligation of restoring the same thing similar in species and goodness. If the contract is real, it has its beginning from the handing over of the fungible thing. But nothing prevents the parties from having agreed beforehand about making a mutuum: which would be a promise of mutuum.

What a fungible thing is was said in n. 384. But for the most part mutuum is made concerning things which are consumed by the first use; among which is money, which, although it does not perish in itself, nevertheless perishes for the one spending it; yet sometimes fruitfully.

Because dominion is transferred to the borrower, he himself sustains the risk of the thing: the thing perishes for its owner.

2. There is no special obligation of the lender: he merely must reverence the right in the thing which he conceded to another. Except in certain cases foreseen by the law itself, as if the debtor becomes unable to pay, he cannot demand payment before the time.

But, because the day is often constituted for the utility of both, he ought not accept anticipated payment.

At the end of the mutuum, the borrower must return the same thing in quantity or quality.

What if, meanwhile, the thing has increased or decreased in price? From the law of nature, the intention of the parties must be consulted. If the consideration of the matter was principal, i.e. if the thing was handed over and must be returned on account of its intrinsic utility, a quantity of the same measure and quality is to be restored or paid; if the contracting parties rather looked to the price, or were solicitous about the value, a quantity of the same price will have to be restored. Wherefore, as Aertnijs-Damen says, I, 905, money is to be returned according to the value which it had when it was given as a mutuum. What, then, if the civil law, as the Code of Italy art. 1821. 1822, or jurisprudence, as in Belgium and in France (cf. Colin and Capitant, II, 80 and 641), declares it sufficient that the same numerical sum be returned, neglecting consideration of value? We have examined and resolved the question above, where payment was treated.

But what if, when titles to the bearer were given as a mutuum, the law or tribunals permit titles of the same nominal value to be returned?

Because now there is another reason of possessing titles than money; because, from the beginning, it was known to the parties that titles sometimes increase or decrease very much in value, we think here that one can more simply stand by the statutes of positive law, since the parties are judged to have committed themselves to chance.

3. Positive laws agree sufficiently among themselves, when there is question of metals or merchandise, so that already from the very definition of mutuum they establish that it is required and sufficient that the same quantity, of the same species and quality, be restored.

Concerning moneys we confess that the laws do not seem to us so clear, if you except the Italian Code. Cf. the Austrian Code, 988, which nevertheless seems to establish the same thing as the Italian; Brazilian Code, 917 and 1258; Dutch, 1793; German, 211 and 607; Spanish, 1751 compared with 1170; Swiss, 312; Mexican, 2690, etc. Besides, they do not contemplate the case in which paper money has been substituted for true or metallic money. For between metallic moneys of one time and another, no great difference of value is to be feared.

4. The contract of mutuum is gratuitous by its nature; nevertheless present-day laws permit stipulations of interest or usuries to be added, concerning which immediately.
5. Obligation of giving money as a mutuum or a thing consumable by use. The necessity of neighbor can make grave, from charity, the obligation of giving a mutuum. Yet rarely will there be absent a grave inconvenience excusing; except if the other needs for a brief time money which he will easily restore.

This is the counsel of beneficence, that we distinguish the mutuum by which, for an upright and suitable neighbor, a way of exercising an honest and fruitful trade is prepared, and the mutuum which is given to a needy person who already seems to be an overburdened debtor. A loan prudently granted for the sake of a trade [OCR uncertain: the printed word before `artis causa` appears as `invalidae:`; context indicates a useful/productive trade] is to be placed among the best and most useful works of beneficence; but a mutuum given to an overburdened debtor usually profits only the creditors, and not rarely sows discord between the benefactor and the obligated person. Wherefore

then it is better to bestow some lesser thing by title of open alms or under the color of a covered mutuum, than truly to lend money which, useless to the borrower, will with moral certainty perish for the lender.

II. On Usuries. 1. Notion. Usury, in the broader sense, is whatever, beyond the principal, is accepted by the creditor. In a stricter sense it designates an increment to be paid to the creditor after individual intervals.

2. Norms. Concerning this matter these things are to be held, which are proposed more fully in the *Questions on Justice*.

a) "No gain can be received by reason of the contract itself" (c. 1543).

b) It has always been lawful, when an agreement has first been made, to stipulate compensation for an extrinsic title. Several are numbered: emergent damage, ceasing gain (from lost possession of money), risk of the principal, or difficulty of recovering it, conventional penalty, and also, according to St. Alph., the long time for which the money is yielded.

c) But while the present condition of society perseveres, it is commonly lawful (and never contrary to commutative justice) to lend money under moderate interest. Wherefore today questions concerning personal census, concerning the triple contract, and concerning agreements by which disguised usuries were sought, are obsolete. Nor must one today dispute concerning the lawfulness of Mounts of piety, savings banks.

The reason is that today, on account of the general facility of doing business or of exchanging money into fruitful things, and the utility of economically securing credit for oneself, the very possession of money has a value which is compensated by interest.

The just rate of interest is to be estimated from the common rules of just price.

The common hope of gain which business in the region brings, after deducting the price of labor and industry which commonly must be applied to that gain, supplies an abstract norm of justice. The concrete norm is taken from common opinion, from the practice of the timorous in a definite society.

In the customary rate the ordinary risk of the principal and ceasing gain are counted. Wherefore, on account only of extraordinary circumstances of risk, emergent damage, etc., which are not otherwise compensated, a greater rate can be sought. But in circumstances which diminish the risk of the principal or the convenience of the debtor (as if he must, when asked, restore the money after a brief interval), the rate is justly diminished proportionally.

And when someone seeks money not from necessity but from hope of gain or because of positive utility, an increase of interest can be explained and made just by a certain tacit partnership.

Nor is moderate anatocism (usury of usuries) illicit of itself. By our law of Italy, of France, the parties can, for annual usuries already owed, obtain usuries either by a later agreement or by judicial authority (art. 1232).

Concerning moratory usuries, laws must be approached and the general principles concerning a penal clause must be applied.

3. The present-day character of sinful usury. The sin of usury by no means is banished from our societies. But, unless there is question of prodigal sons of families who hand themselves over without scruple of conscience into the hands of certain moneylenders, in several regions sin is committed not so much by open lending-at-interest as by hidden lending-at-interest. This disguised usury chiefly has place in sales with credit, i.e. in which instruments of labor or furniture are bought, with payment permitted by parts and after intervals. Then buyers, easily deceived by hope of credit, do not advert to the harder conditions which are imposed on them, or they think that they can satisfy those conditions conveniently. Thus it happens that by explicit agreement, unless partial payments were made on the stated days, they would give the seller the right of recovering the thing sold and keeping the moneys received. Yet there are, even in Europe, regions in which 20 and 30 p. c. are demanded as usuries. But outside Europe, for example in China, in the Indies, biting usury kills very many debtors, since not less than 60, 100, 200 p. c. are demanded. There indeed there would be place for those very severe rebukes of the holy Fathers of the Church which we reported in *Questions on Justice*, n. 359, ff. But this seems to us to be the sign of illicit usury, if so much interest is demanded in the region where the contract is made as generally cannot be obtained from fruitful businesses. For, according to the abstract rule of justice, interest ought to remain below that quantity, since the moneylender obtains interest for himself without labor. Another sign is had if debtors after some time are compelled to put their things up for sale. Exactions of this kind, in the first place, gravely offend charity. For it is better, if the debtor is not able to pay, to deny him the loan than, as the holy Fathers objected, to cover the greatest cruelty under the appearance of a benefit (cf. *Questions on Justice*, n. 359). But they are also opposed to justice. Nor should you object that because of risk of the principal a much greater interest can be sought. For moneylenders of this kind are accustomed by their unjust conditions to reduce the debtor to inability, so that then from the selling-off of his goods they may acquire a greater gain for themselves. Therefore by that faculty the very risk of the principal is abundantly compensated.
4. Positive law. 1. Canon 1543 has this: "In the furnishing of a fungible thing, it is not of itself illicit to agree concerning legal gain, unless it is certain that it is immoderate, or even concerning a greater gain, if a just and proportionate title supports it." Therefore legal gain is presumed just.

2. Civil laws. a) If you except commercial business, as in the Swiss C. (Obl. 313), they preserve this notion of mutuum, by which mutuum is of itself gratuitous: interest is not owed unless it has been promised by stipulation. - b) For a sufficiently long time the laws themselves established a maximum interest, beyond which interest could not validly be promised. Today almost everywhere it is lawful for the parties to agree concerning a greater interest. In France, however, there still theoretically remains the law of 3 Sept. 1807, which forbade that by private agreement heavier usuries than 5 p. c. in civil matter, 6 p. c. in commercial matter, be promised. But by the law of 12 Jan. 1886, that law was abrogated in commercial matter. Finally, by the law of 18 Apr. 1918, even in civil matter, the law of 1807 was suspended until the end of the war and for a space of at least five years from the end of the war. Yet most laws establish legal interest for this reason, that it may be defined what usuries sometimes must be

paid without agreement, for example by a debtor in delay. But they think of checking excess in various other ways, for example by invalidating acts in which someone has abused another's necessity, levity, or simplicity so that he might make excessive gain (art. 138 Code of Germany); or by permitting that the debtor can pay the debt before the contracted day if interest greater than legal has been promised. By the Code of Germany, art. 217, already after six months he can return money accepted as a mutuum, if more than 6 p. c. has been demanded, provided that six months beforehand he has made the creditor more certain. In Italy the one who must pay beyond legal interest (4 and 5 p. c.) can do the same after five years. There also, for the validity of the obligation, interest greater than the legal must be promised in writing (1831). - d) Legal interest is for the most part contained between 4 and 6 p. c. Usually in commercial matter, legal interest surpasses legal interest in civil matter by one p. c. It is established, for example, 5 in civil matter, 6 in commercial matter. In the Brazilian Code, the rate 6 p. c. is placed without distinction. - c) Other laws (for example the Brazilian) permit anatocism, or usuries of usuries; others, more numerous, forbid that they be promised in advance, excepting current accounts (*Conto corrente*) in banking. Thus the Swiss C., 313. But either every year, or, as in the Austrian C., § 998, after two or more years, it is lawful, by a new agreement, to convert interest already owed into fruitful capital.

Penal sanctions also have been enacted in very many regions against excessive usuries: for example in the C. of Belgium and France, against those who are accustomed to practice those arts.

In England, after the laws against usuries enacted by Edward the Confessor were abrogated in the year 1854, a new law, of the year 1900 (Money lenders Act), opened recourse to tribunals, which can free debtors from that burden of excessive usuries.

In the U.S.A., legal interest varies (in 32 States it is 6 p. c.) between 5 and 8 p. c. In eight States no limitation is placed on agreed usuries, while in most there is established a maximum interest which can be demanded by agreement: i.e. 6 p. c. in 12 States; 7 in 2; 8 in 8; 10 in 12; 12 in 7; 15 in 1 State. Sanctions vary: here only the interest, there only the principal sum; there, in Arkansas and New-York, the principal and interest are lost by the exactors of excessive usury.

5. Remedies against mordant usuries. Laws have some efficacy; but morals have greater efficacy. It is especially useful that what, in a definite society, are sinful usuries be openly taught, and at the same time that institutions be established where useful moneys can be obtained at moderate interest: in this way the very occasion and temptation of abusing a neighbor's necessity are diminished. Thus, by the work of the Friars Minor, in the 15th century, there arose in Italy the so-called Mounts of piety for helping the poor, who had been oppressed by the exaction of the Jews, through mutual money to be given against a pledge accepted. The same religious keenly defended the disputed cause of the Mounts and prevailed in Lateran V (1512-1517), so that by *Inter multiplices* they were solemnly approved. Today almost everywhere these Mounts are found publicly administered. Although they must be called useful, indeed necessary, they do not escape every rebuke. The poor, not always upright and sober, deposit there even things necessary to themselves or to the family which had been given to them for personal use. After about a year, if the moneys have not been restored, those things are sold under the spear, often for an unequal price, so that the borrower suffers by greater misery than

before. Besides, this defect is common to all "official" philanthropy: its ministers, hired for exercising that function, often lack the spirit which offices of charity require; and since they are obligated, they excite no grateful affection in the souls of the poor; nor do they know how to adapt their mode of acting to various cases.

Far more useful for society are funds, especially of private origin, which are established everywhere so that they may lend money for fruitful uses at moderate or at least not excessive interest. Therefore missionaries, in regions where voracious usury rages, should not neglect to warn neophytes concerning the crime; and by social institutions prudently erected they should strive to lessen and gradually remove the evil. In this way also they can wonderfully help the propagation of the gospel.

V. Census

I. Notions. 1. Definition. Census, in general, is an annual pension, to be paid to another, which burdens some immovable good, or some capital of a thing, or some patrimony.

He to whom the pension is to be paid, or the creditor, is the censualist; the debtor of the pension is called the censuary.

2. Distinction. There is distinguished a perpetual census, and a temporary census, which is chiefly the life-census. It is redeemable if the censuary, by paying a certain sum, can free himself from the burden of paying the pension; otherwise it is irredeemable.

3. Constitution. The obligation can arise by onerous title, especially through contract, and by gratuitous title, through donation or legacy, as when a testator obliges his heirs to pay an annual pension to a well-deserving person. Not rarely, where this can be done civilly, a census is bequeathed to a church or to a pious cause.

4. The contract of census is a contract by which the censuary obliges himself, whether in perpetuity, or for a definite time, or for the life of a definite person, to pay an annual pension to the censualist. If he obliges himself on account of a thing handed over to him, that thing cannot be claimed back, and thus the contract of census is distinguished from the contract of mutuum.

Formerly a sum was rather paid so that one might acquire the right of receiving an annual pension from a thing already possessed by the censuary, or even from fruitful labor which he was judged to perform. This census, which was called personal, so that it might be distinguished from the real census (from a field), fell under suspicion of disguised usury. And in truth this mode of fruitfully placing money, if the labor of the person was not truly fruitful and by the redemption of the census the capital had to be restored, easily covered lending of money at interest. Today, however, since it is generally lawful to lend money at moderate interest, this contract among private persons has become obsolete.

Modern States, however, besides the debt which they contract in a form also usual for private persons, often provide themselves with necessary moneys in this way: they create saleable titles of public credit to the bearer, which give to the buyers the right of receiving an annual sum from the revenues of the State. When that right is of itself perpetual, since the buyer can never demand the restitution of his money, there is had a true constitution of perpetual census; nevertheless this census

is redeemable, inasmuch as the State reserves to itself the right of freeing itself from the burden by paying the sum which is inscribed on the title and is called its nominal value. (Suppose a title of 100 pounds, for which, when they have been received, the State pays each year [printed blank]. It will redeem the obligation by paying 100.) Often, however, from the beginning it establishes that within a certain space of time, for example [OCR/printer uncertain: first digit missing, printed as **00** years], its debt is to be extinguished. Then, each year, titles are designated by lot in a defined number, which it will extinguish by payment (*Rendita ammortizzabile*, *rentes amortissables*†). Those who buy titles for this constituted census have in truth merely lent money at interest to the State, although the name of census is preserved.

II. Perpetual and Life Census. 1. Not all laws admit the private constitution of a perpetual census. Thus the Brazilian Code, 1124, excludes perpetuity by the very definition of the contract of census. Other laws, such as the French and Italian Codes, admit a perpetual census, but make it essentially redeemable by the censuary. So also does the land-census of the German Code, art. 1199. Nevertheless they can agree in French law that it cannot be redeemed before ten years, or, in Italian law, before thirty years, if an immovable thing has been handed over, or without a certain prior notice.

2. While the use of another census is rare, the life-census is most frequent. It is constituted for the life of some person, who for the most part, but not necessarily, is the censualist or creditor himself. Indeed it can be constituted for the life of several persons, so that the whole is owed until all have died. This census is not redeemable. It can be constituted by gratuitous or onerous title; and then it is an aleatory contract, which will be just if, after computing the probable expectation of life through which it is owed, the sum of the pensions equals the capital and its fruits, decreasing each year pro rata. Practically, one must stand by the judgment of experts, unless both parties, conscious of their ignorance, have spontaneously wished to commit themselves to a greater chance.

Since the constitution of a life-census is sometimes made in order to despoil heirs, it is well understood why the Brazilian Code, art. 1125, declared null the constitution of a census in favor, not only of a person already deceased, which is manifest, but also of a person who within thirty days from the celebrated contract dies from an illness with which he was already then afflicted.

VI. Purchase-Sale

The contract of purchase-sale can by antonomasia be called the commutative contract, to which all others can in some way be reduced. In examining this contract, the moral theologian asks from positive law especially in what way, at what moment, the dominion of the thing sold is transferred, and who bears fortuitous cases; but he consults natural justice concerning the obligation of the buyer to pay the just price; concerning the obligation of the seller to hand over the promised thing; finally concerning frauds which can be strictly injustices, or can be opposed only to [OCR uncertain: printed adjective damaged; probably perfect] and commendable honesty: for it is clear that no fraud, whether concerning the price or concerning the thing, is laudable and commendable.

A. - General Matters

I. Notion. Purchase-sale is a bilateral, consensual contract, by which one party obliges himself to hand over a thing for a defined price, which the other party is bound to pay.

This definition expresses the notion common to every law. It is complete if, as in French and Italian law, the dominion itself of the thing can be transferred between the parties by consent alone; but if, as most more recent laws have it, dominion is not transferred by consent alone, there must be added: "by which one party, the seller, obliges himself to hand over the thing and to transfer it into the dominion of the other." Cf. art. 133 [printed citation; context suggests 433], Code of Germany.

II. Elements. This contract necessarily contains three things: consent, thing, price.

1. Because the contract is consensual, it is completed by consent alone. Besides, when one's own thing, determined in body, is sold, regularly, in French and Italian law, dominion is transferred by the consent itself. When the thing is defined only by kind, or law prevents dominion from being transferred by consent alone, then the effect of the contract is reduced to reciprocal obligations.

In French law, the sale of another's thing is null, since dominion cannot then be transferred. But the parties can conceive the sale otherwise, in the Roman manner, as they say; in that case a mere obligation is undertaken of bringing it about that the promised thing comes into the dominion of the buyer.

2. The seller is bound to hand over in due time the thing which he owes; if it must be sent, the expenses are of themselves imputed to the buyer. The buyer is bound to pay the price.

III. Eviction. The seller must moreover warrant against eviction, unless it has been otherwise agreed.

Eviction is had as often as the buyer is juridically disturbed from possession of the whole thing sold, or of a part of it. The seller is obligated to warrant this if the eviction has as its cause a defect of the right which the seller had to transfer, and the eviction could not be avoided, for example by warning the seller, who had a means of repelling the plaintiff, concerning the suit that had been moved.

IV. Order of execution. Which party ought first to execute the obligation, unless it has been defined by agreement, is not established. But if one party does not furnish what he owes, the other party can either withdraw from the contract or demand that damages be repaired.

V. Fortuitous case. In French and Italian law, from the perfected contract the buyer bears the fortuitous case: the thing perishes for its owner. In German law, the party whose prestation has become impossible is indeed excused, but he can no longer ask anything from the other party, unless this other was at fault. If, however, for example, compensation has been given for a thing which perished by chance, he will have to hand this over to the other party asking for it and executing his own obligation. Therefore positive laws must be consulted concerning fortuitous case.

B. - Obligations of the Seller

Sum of Obligations. Concerning the thing, the seller contracts the obligation of manifesting its defects, of handing it over, and of warranting eviction.

1. From the law of nature itself he must manifest: a) substantial defects, both hidden defects and those which the buyer, from his inexperience, is perceived to be ignorant of; for error concerning these defects invalidates the contract. Substantial defects are defects which make the thing harmful or notably useless to the buyer, with attention also to the quality principally intended; b) accidental defects concerning which he is asked in general or in species. Again, understand defects which, of themselves or from the condition of the buyer, are hidden from him. Concerning the effect of such error, cf. above n. 423.

He does not have to manifest accidental faults concerning which he is not asked, provided he does not fraudulently hide those same faults, nor demand too great a price. Asked in general, he can be silent about defects of small moment, ignorance of which seems to give cause neither to the contract nor to the price. Nor must he manifest defects concerning which he has protested that he does not wish to guarantee anything; yet in our civil forum this protest effects nothing as regards hidden defects known to the seller.

From positive law, hidden redhibitory faults cannot be kept silent, or those which so diminish the utility of the thing that the buyer would not have bought it except perhaps for less. Certain laws exhibit a taxative catalogue of these faults, as regards certain animals.

2. He must hand over the thing to the buyer in due time, as we said, but, of itself, at the buyer's expenses. On account of omission or delay imputable to the seller, the buyer can recover damages and besides can either urge the execution of the agreement or seek rescission of the contract.
3. We have just treated eviction at n. 453. The parties can within certain limits increase, diminish, or even remove the obligation of warranting eviction.

Frauds and Lies. Goods of themselves must be handed over true and pure. Nevertheless it is lawful to adapt oneself to the received usages of upright men. Injury is committed: a) if adulterated things are infected with a substantial fault; b) if from the contract a special obligation of handing over a pure thing had been undertaken; c) if an unjust price is demanded. - Yet let us commend a simpler honesty with all our strength.

The customary lies or perjuries of merchants concerning the price for which they themselves procured things for themselves, or concerning proposals made to them, are not judged to have been efficaciously harmful, since little faith is given to them.

More than in quality, fraud in quantity and measure is to be condemned as injury.

But those who by arts of this kind entice buyers indirectly harm other merchants of the same things. Yet are they injurious to these? Certain persons affirm that. But since no juridical relation has intervened between them and the other merchants, we think this must be denied. It pertains to positive law to repress or restrain fraudulent competitions (*concorrenza sleale*, *concurrence déloyale*), for example by a collective action by which merchants are permitted either to denounce other deceivers of buyers to the public authority, or to act for damages before a judge.

A merchant who hands over to another a thing already assigned to someone else, or registers it in the public records under another name, commits injustice. But the buyer in good faith can use the

positive law which not rarely awards dominion to him to whom the thing has been handed over or in whose name it has been inscribed.

C. - Obligation of the Buyer

I. The chief, indeed of itself the only, obligation of the buyer is that of paying the just price which has been agreed upon between the parties. Therefore the difficult argument concerning just price must be treated. But the things which we define here must be completed by those which will have to be added in the contract of lease-hire.

Price is nothing other than the value of a thing expressed in money.

Moreover they are accustomed to distinguish legal, common, and conventional price; to which we think there must be added the price imposed by monopoly. It seems that each must be discussed distinctly.

On Legal Price. Legal price is called that which is directly fixed by law itself. Directly, I say, because indirectly the legislator can influence the prices of things by fiscal devices: as if, after imposing a customs duty, he contains the exportation of certain things within such limits that in his own territory they are abundantly available.

In ordinary circumstances, the legislator is no longer accustomed to establish a direct price, either single, or minimum and maximum; but by law it is customary to define what several officials, for example notaries, can ask for instruments to be prepared or written; or at what price companies which operate railroads must transport persons or goods. Officials and companies must stand by these definitions, unless it is established that the price is unjust or that custom has derogated from it. - But from legal fixings of the prices of goods we can less absolutely and universally gather an immediate obligation of conscience. For the common persuasion concerning the mind of the legislator and concerning the equity of the valuation must be consulted. The reason for the difference between these fixings and the former is this: those who use the ministry of an official, or commit themselves or their goods to a railroad, tacitly promise the legal price and do not think of another agreement; whereas, in buying goods, private agreements are customary.

On the Expedience of Fixing by Law the Price of Goods,. in our present society, there is dispute and doubt. Perhaps it is better that the legislator use indirect means of urging equitable prices of things commonly useful, as if he commits to prudent arbiters, after stated intervals, the definition of an equitable price of foods, and by publication of the judgment directs the public conscience, by which buyers and merchants may be protected from unjust vexations.

When necessary things themselves seem about to become scarcer, so that famine is to be feared, it is also fitting that the legislator prevent those things from being bought up by a few richer persons.

II. On Common Price. Common price is accustomed to be obtained by many purchases and sales. It is governed by common valuation. This valuation not only declares what is an equitable price, but is also the proximate cause of the value of things, or of the aptitude by which, in a given society, things can commonly be exchanged with other things. Yet the valuation itself is not, at least wholly, arbitrary, but is determined by the objective utility of acquiring the thing, as this is commonly perceived.

Once the common price is known, we know the price which, justice being preserved, can be imposed even on an unwilling buyer; we know what the buyer, unless special circumstances excuse him, must pay from justice. Therefore it supplies the norm of justice to be observed in contracts. But, unlike legal price, which is usually single (although the laws themselves can establish merely a minimum and maximum account of price), common price is divided into the lowest or kindly price, the middle or moderate price, and the highest or rigorous price. These are in moral valuation, so that in common foods and necessary things, a lesser distance separates the highest price from the lowest. The valuation is considered according to the place and time where the sale is made, so that, when the place or market is changed, prices themselves can increase or decrease. Today, because of the facility of transportation, a broader region than formerly must be held as one market.

But by which price, highest, middle, or lowest, a thing is acquired is defined by private agreement, in which, provided at least justice is preserved, neither party is forbidden to consult his own utility.

Yet observe this: even within the limits of just price, he would be unjust who, by unjust means, such as by unequal weight or by spreading false reports, procured for himself the highest just price.

Moreover, the spontaneous offering of things which are not so common that they are almost continually bought and sold, and the already completed use of a thing, change that valuation. - In things not new, which chiefly draw their price from the value of the metal, for example in silver furnishings, workmanship (*mano d'opera*, *façon*) is scarcely now considered. On the contrary, because of scarcity of things or an unusual multitude of buyers, the prices of things increase. But, in a common scarcity of foods, charity will be gravely offended by those who, by increasing the prices of such things, strive to seek greater gain from another's misery. Therefore common hatred falls upon them. Indeed, when there is an abundance at a gentler price, whether, justice being preserved, such prices can be demanded for things which all need that they make those same things inaccessible to very many, can deservedly be doubted. Cf. n. 464. And they undoubtedly violate justice who, by accumulating and hiding those same things at their own place, create a false scarcity of these things, and thus deceive the common valuation itself.

Just Exceptions. 1. Things can be bought at a cheaper price without injustice: a) things which are less useful to the buyer, so that he truly buys in favor of the seller. But here beware of oppression of the poor; b) things bought together in a great quantity: the diminution of price is compensated by the advantage which is procured for the seller; c) things to be handed over at a time when they will be worth less; d) things whose price is paid before the day.

2. A greater price can be demanded by the seller: a) to whom deprivation of the thing would be peculiarly harmful or unpleasant; concerning this cause the buyer will have to be warned, lest he be deceived; b) who sells things by retail, because of greater labor, etc.; c) who, by consenting to delayed payment, indirectly lends money.

— But in the just price there are not included gifts to be bestowed on servants, unless received usages approve that they be imputed to the master; or expenses which, because of a cause peculiar to himself, the seller had to make; or the special utility of the buyer.

Here, however, distinguish fruitful utility from sterile utility. If from the thing bought the buyer seems likely to gain a great profit, then the seller can wish to be admitted as though as a partner, and

to compute in the price a certain anticipated payment of the common profit. And the buyer himself is not forbidden spontaneously to offer something by title of gratitude. Besides, because of the errors of liberal economy, it happens that not a few wish to profit from the special utility of the buyer, and certain authors, such as Gousset, do not wholly disapprove this. Wherefore that it be done in this way is not to be advised, but what has been done can be tolerated.

Sale of a Thing Which Will Become Cheap. As long as the common valuation is in force, the thing preserves its value. Wherefore, without injustice, according to such valuation a thing can be sold by him who foresees or knows that it will soon become cheap. But a magistrate who knew that, on account of a prepared law, certain prices were going to be notably changed, if, concerning a matter to be covered by secrecy, he "warned a friend, would unjustly," says Lehmkuhl, I. 1328, "violate the secret." We understand this concerning an injustice such as every transgression of an office imposed by duty is. This is committed against the republic. But whether he is unjust toward other private citizens whom the information given to the friend will indirectly harm is much less certain. And it seems that he can easily be excused from fault who warned a friend worthy of mercy, whose ruin he wished to prevent.

Use of an Unjust Price. If unjust prices have been procured by the evil arts of others, one who knowingly wishes to enjoy them cannot be praised. Most condemn this as injustice. Yet some, as d'Annibale, II. 425. 29, respond more benignly. Arts of this kind are often exercised in the "titles" of banking or industrial companies. But because these things are unknown to the common people, those who buy and sell titles at the stock-exchange price commit themselves to a chance which by present-day usage is not disapproved.

Maximum Price of Necessary Things. The primordial law itself, by which private possessions are to be referred to the common good, demonstrates that foods and things commonly necessary cannot, on account of their present or foreseen scarcity, stand for sale at such a price that sellers make immoderate gains, while a multitude of men is deprived of them or reduced to destitution. Just as a certain wage is a just minimum, so, by equal reason, there is a maximum price of necessary things, established by justice itself. But this is still ignored by too many for us to be able from it to impose a debt of strict justice and restitution on those who, using no fraud or force, sold those things at the prices offered by richer persons; indeed, unless the law establishes a measure for the very abundance in which such things can be possessed by individuals, purchases by richer persons or by brokers cannot be prevented, so that the preservation of moderate prices will now profit men of modest condition very little.

III. On Conventional Price. When legal and common price are lacking, it remains that the conventional price be established by free agreement. The cases will be: a) if, conscious of their ignorance concerning the true price, both parties have wished to go, as it were, into chance; b) if a price of affection is asked, as when someone sincerely does not wish to sell the thing and must be led to consent as though by a premium; c) if there is question of a thing which, not even by the judgment of experts, obtains a common value, but is valued by uncertain fancy or affection, provided even then it remains within reasonable limits. But because, in things of pleasure, prevailing usages create true value, it happens that things which formerly were without value are now commonly valued. And one who wishes to enjoy that perfect honesty which will allow the soul to be free from every scruple will not wish to use the ignorance of the other party so that he may acquire a thing for himself at a much

cheaper price, or sell it at a much greater one. Often the good faith of buyers in these matters will not have to be disturbed; nevertheless right principles should be inculcated.

IV. On Monopoly Price. 1. Notion and origin. Monopoly is had when there is, or comes to be, a sole seller of certain things, and therefore he bears the arbitrium of the price. It is of various origin and character.

Natural monopoly arises from innate qualities of a person, or also from the discovered quality of a possessed thing, which quality had long lain hidden. Not rarely gifts of talent and a fortuitous case together have been causes of an invention.

Artificial monopoly results either from law which has reserved certain things, whether to the fisc or to a private person, physical or moral; or from arts by which the craftsmen or merchants of the same things dominate the market, as they say, so that they compel others either to perish or to stand by the same laws.

Since free competition is more and more suppressed by agreements among producers or sellers of the same things, and true monopolies are created for establishing, according to their own utility, the quantity of things to be produced and the account of price, in truth the account of common price begins to cease.

The rules concerning monopolies must be applied. They require that the price be established which, without monopoly, would be just; or that from labor an honest gain be received, according to the state and condition of the one working. Honest is that which effects an honorable support, with a sum added for moderate advancement or progress.

For a moderate, indeed, but not immense gain is regularly offered to human labor. Wherefore immense gains are of themselves suspect of injustice unless they can be positively explained either a) by sale in another region where, on account of inequality of exchange or another cause, things are sold much more dearly; or b) by some invention by which someone can produce things at a much lower price than they are commonly produced; or c) by a special art and industry by which, for example because goods have been bought together in an accumulated way, many expenses are spared.

While some years ago producers and merchants were competing about yielding things at a cheaper price, not rarely wages below the just amount were paid to workers; but now the rights of buyers who seek things for personal use are frequently violated.

— The chief injustices today consist in various abuses of monopoly, occasion for which is given through syndicates. For: a) merchants who buy things in order to sell them off demand a price without any proportion to labor and expenses; b) an increase of wages is alleged so that prices may be increased much more. If, for example, wages are increased by 5 p. c., prices increase by 10 p. c. Yet no title of gain for the master of the business has acceded; c) by studied sales and purchases the common valuation in stock exchanges is corrupted, and it is obtained that "shares" or "obligations" of companies are valued above or below their true value; d) traders who devote themselves to lucrative trading increase the prices of things as much as they can, whereas they ought to have regard to the price which they themselves paid and to the hoped-for sale. In things whose sale is easy, indeed certain, to buyers who will pay the price shortly or immediately, gain does not seem able to surpass 10 or 12 p. c.

For legal commercial interest is not accustomed to surpass 6 p. c. But that interest reveals to us the common valuation of the fruit to be hoped for from trades, after deducting, however, the value of personal labor and of the risk assumed by the one undertaking the business. Wherefore, in a non-dangerous trade, we attribute 4 [OCR/printer uncertain: printed first digit damaged; calculation indicates 4] or 6 p. c. to labor, when we have estimated the honest gain of the trader at 10 or 12 p. c.

B. - On Certain Sales Specially

I. The seller can reserve to himself the faculty of redeeming the thing sold. But since this faculty (*pacte de réméré*) places the thing in an uncertain state, which impedes commerce, it cannot be too long-lasting.

Wherefore the French and Italian Codes permit the reservation of such a pact for only five years (Italian Code art. 1516; French, 1660); the Brazilian Code for three years (1141-1143); the Austrian for immovable things alone and for the life of the seller (1070); the German for three years for movable things, for thirty for immovable things (503); the Spanish (1508) for ten years; the Dutch for five years (1556). The Lusitanian Code does not admit the pact (1587).

II. Things Sold to Taste. When things are sold which, as wine and oil, are customarily tasted, the sale, in several laws, is not considered perfected unless the thing has been tasted and approved. Yet the buyer can renounce this faculty; he is for the most part considered to have done this if he has commanded the merchant to send the thing to him. Besides, today rather a sample is sent; if this has been approved, it will now suffice that the thing handed over agree with the sample. - Cf. the Brazilian Code, 1144-1148; French, 1587; German, 495-496; Spanish, 1453; Dutch, 1499. This presumption is not read in the Austrian and Swiss Codes, but an express agreement can be made.

III. Auction, or Sale Under the Spear,. is a species of sale by which goods are subjected to the voice of the herald and assigned to the last or first bidder: to the last, if ever greater prices are proposed; to the first bidder, if the herald, after making an estimate of the highest price, successively proposes lower prices until one person consents. Hastation can be voluntary or forced.

Of itself it bears the appearance of a certain chance or contest to be established honestly: then the price which is procured by honest arts is considered just.

But received customs today in more than one region have sufficiently adulterated that contract, so that arts less approvable in themselves are admitted; but, since they are practiced on each side, the equality of justice is restored by the compensation of those arts.

In the law which we use, in voluntary auctions redhibitory defects are warranted, and rescission on account of lesion is granted; for the seller, before the thing has been assigned, it is lawful to retain the thing for himself, if the price has displeased him; a premium is customarily promised to bidders; and it is lawful to bid without an intention of buying, provided you truly sustain the risk of acquiring the thing and can and will pay the price. - No one condemns him who merely asks another not to compete with him in some bidding. But an agreement concerning that matter is not permitted by many except among related persons. But why you injure justice by stipulating what you can honestly ask does not appear. But he who has thus kept away all buyers creates a monopoly for himself, concerning which one must speak as above. Indeed, when it is intact for the seller to keep his own thing, an agreement of this kind does not of itself offend even charity. Again, however, because

auctions are accustomed to profit buyers more, and to compensate contrary devices, it seems that it can be tolerated that fictitious bidders be sent by the seller (to stimulate the true bidders) and defects be hidden. Thus Aertnys, III, 190. - Therefore the unjust arts to be mentioned here are nearly these: a) not to hand over the thing assigned, or to substitute another less good thing in place of the thing exposed; b) by fraud or violence to turn others away from bidding, or not to pay the offered price, or to bid fictitiously when you cannot or will not undergo the risk of acquiring the thing; c) on the part of the official who directs the auction, deliberately to effect this, that friends buy the thing at a cheaper price.

IV. Sale Through Brokers. A broker is one who for another undertakes the care of buying or selling a thing.

Those who habitually carry out such an office should observe the laws and the usages of upright men. Thus bankers and money-changers, to whom sometimes no better rule can be supplied except that they abstain from frauds, promote the utility of their client, and be content with a moderate fee.

He who has bought at a cheaper price, or has sold this person's thing at a dearer price than the principal had already permitted, has of himself acted for the principal, to whom therefore that gain must yield. Except if the gain is to be attributed to his special industry; if a beneficent intention can be supposed in the principal; if a small gain is judged to have been tacitly remitted; if received usage so bears, or tacit consent appears from elsewhere; if, after diligence has been applied, and no greater price has been found among others, he seriously buys the thing, and therefore at his own risk, and then, when occasion is given, sells it more dearly. This practice seems full of dangers, although it is frequent among money-changers. But if merchants remit anything from the price in view of the broker, he can retain those things for himself. This will happen to those brokers whom it is of interest to merchants to attract on account of their profession. One must answer more cautiously concerning the reduction which merchants seem to grant to servants.

Booksellers also are brokers, who receive books from authors or editors so that, without any risk of their own, they may expose them for sale and announce them in their catalogue. By a league made among themselves it happens that they promise this very slight work of theirs very dearly, so that, for example, they must return only half the price inscribed in the catalogue for individual books sold by them. Thus it happens that to the writer, who has labored more than all, the smallest part of the gain returns, and the very price of the book is notably increased. Again, a remedy seems to be sought from a society entered into among writers, which at the same time would care for the diffusion of books.

Corollaries or Scholia.

1. He who cedes to another, who is ignorant, at an ordinary price a claim, i.e., a private credit (not titles which are valued on the Exchange), whose debtor he knows is not solvent, conceals a substantial defect, so that he is unjust (Lessius, *Iust.* cap. 21, n. 81).

But what if by positive law, as, for example, art. 1542 of the Italian Code, 1694 of the French, he ought to answer only concerning the truth of the claim? We understand laws of this kind to have been made with this mind, that, apart from agreement, they transfer the risk to the buyer, but not that they should wish to heal the injustice of the seller who has ceded for a price a thing worthy of no

price. d'Annibale, however, II, 466, would not dare "to obtrude this opinion upon anyone against the most manifest law."

2. An inventor can enjoy a legal monopoly so that he may sell his invention at a greater price than it would be estimated at of itself. For there is a just cause of fostering inventions in this way. Yet here also that saying is valid: "Nothing too much."
3. When by a great buying-up of things a private monopoly is introduced, the price indeed, with justice preserved (but not always with charity preserved), will be able to be increased, yet not beyond the highest price which agrees with the true abundance of things.
4. Likewise agreements by which sellers or craftsmen of the same merchandise agree concerning not selling merchandise or letting work below a certain price can be entirely honest, as if by this reason they procure equal conditions for themselves. But a conspiracy not to sell, below that highest price, things which many need would be opposed to charity.

Nor are contractors of public works today reprehensible of themselves who, after an agreement has been made, compare their mutual estimates among themselves so that they may yield the thing to be undertaken to one who must hand over to the others part of the greater price which he will obtain. Indeed they increase the gain from this not a little, but, provided they keep themselves within reasonable limits, the magnitude and difficulty of such works today seem to demand gains of this kind. (Thus, recently, in Holland, the public magistrate himself judged this cause.)

You ask concerning the nature and inviolability of so-called literary, industrial, artistic property, etc.

1. Laws are accustomed to concede a civil action to authors, inventors, etc., at least if they have observed certain prescriptions of the laws: against all who, without their license, have published the work in print in the same or another language, have imitated the machine and made it saleable, have performed a musical work, etc. Yet that privilege is not perpetual, but remains, for example, through the life of the author and fifty years after the death of the author. But it is accustomed to be protected by international pacts, so that also among other nations the author can impede the diffusion of his book, his machine, etc.
2. Because it consists in this, that it reserves to the author his work to be published, so-called property is not in reality anything but a certain monopoly.

But because without positive law that reservation would be entirely futile, and of itself it is impeded by the very efforts which authors make that their works may become known and be in the hands of many, we judge that their right, otherwise long unknown, is not natural, but has its source in the law itself. Although it is very agreeable to equity that the works of an author or inventor should also be recompensed by monetary reward.

3. Wherefore, beyond the positive law itself, no office of justice forbids the buyer of a book or machine from making any honest use whatever of the thing acquired.

A sufficiently common opinion holds that laws concerning property of this kind immediately bind conscience. Yet no certain reason is perceived by us why we should pronounce more severely

concerning those laws than concerning others, and gather from them a greater obligation than that of permitting authors and inventors to use their right. We are confirmed by the easy efficacy of legal protection of this kind in the external forum; we are confirmed by the extension, growing day by day, of this kind of property, so that in reality it creates prohibitions that are arbitrary and inconvenient to many.

Are those very pursuits of perceiving ever greater monetary profit from things which confer upon the deserving a nobler reward of honor and glory so greatly to be praised and commended?

Nevertheless, from the natural law itself, a beautifully written work or a useful invention grants to the author an inviolable fame, which would be injured unjustly by those who, under a false name, published the work or spread abroad the invention.

Statutes of Canon Law. 1. By force of c. 1530, for alienating immovable ecclesiastical things, or movable things which can be preserved by being preserved, there is required: an estimate of the thing made in writing by upright experts; and, by force of c. 1531, § 1, the thing must not be alienated at a lower price than that which is indicated in the estimate; - 2. a just cause, i.e., urgent necessity or evident utility of the Church, or piety; - 3. the license of the legitimate Superior, without which the alienation is invalid. And when there is question of precious things, or of things which exceed the value of 30,000 lire or francs, the legitimate Superior is the Apostolic See.

Moreover, unless the circumstances suggest otherwise, the alienation should be made by public bidding, or at least made known; and the thing should be granted to him who, all things considered, has offered more; the money received from the alienation should be placed cautiously, safely, and usefully for the advantage of the Church (c. 1531, § 3).

To safeguard the utility of the church, the Code requires the special license of the local Ordinary so that immovable goods of the church can licitly be sold, or even leased, to their own administrators and to those joined to them in the first or second degree of consanguinity or affinity (1510); to eliminate simony, it forbids in the sale or exchange of sacred things that any account of consecration or blessing be had in the estimation of the price. - "Administrators can exchange titles which they call to bearer for other titles more, or at least equally, safe and fruitful, with any species of commerce or negotiation excluded, and with the consent of the Ordinary, of the diocesan Council of administration, and of others whose interest is concerned" (1539, § 2). Cf. concerning these sanctions, *Epitome iuris canonici*, II, n. 849-864.

The Cause of the Present Evil. "Purchase and sale seems to have been introduced for the common utility of each, namely while one needs the thing of another and conversely, as is clear through the Philosopher (*Polit*. l. 1, c. 6 at the beginning). But what has been introduced for common utility must not be more for the burden of one than of another." But today the immoderate hunger for gain has altogether departed from that most wise reason, and, too often, purchase-sale ends in a duel in which one party strives to conquer and oppress the other.

For this reason all things are confusedly perverted, and the very notions of just and unjust are weakened in the minds of those contracting, while common sense protests in vain, which even now marks with a certain note of infamy those who hunt easy and excessive gain.

Yet definitely to condemn someone to restitution will often be difficult: a) on account of the obscurity or complexity of things; b) on account of ignorance or common error, which permits us to leave men to their own conscience; c) on account of excuses from the necessity of conforming oneself to the general mode. Many are compelled to give their name to a syndicate and to sell goods at the price which the directors have established. Then those who were not the authors of the objectively unjust price seem able to be excused from injustice. They therefore will rather have to be stirred up to making large alms. But conscious authors of an unjust price commit injustices so grave, so harmful to many, that the quantity to be restored seems to exceed their own means. It then remains that, after those things necessary for preserving one's state modestly have been preserved, they should give all the rest to the poor or to pious works.

Private warnings also will be little efficacious, so that a more efficacious remedy must be sought from contrary associations of buyers, which would put bridles upon the cupidity of merchants.

VII. On Permutation and Exchange — I. On Permutation

Permutation is a consensual, bilateral contract by which one transfers to another, for a thing, a thing into ownership, or promises to transfer a thing into ownership.

According as the law admits the translation of dominion by consent alone, or besides requires handing over or inscription in the records, the contract will transfer or will not transfer dominion.

Each contracting party ought to warrant eviction to the other.

In ecclesiastical law, special cautions are established concerning the exchange of benefices. None can validly be done without the consent of the bishop or quasi-bishop, or of the Vicar general furnished with a special mandate. Cf. c. 1487, 1488 and *Epitome*, II, 810.

II. On Exchange

Exchange. is a contract by which a money-changer, for the party desiring exchange, changes monies with some gain beyond the principal.

It is said only of the changing of money; and it is distinguished as manual or small exchange, when present money is exchanged for other present money; local or trajectitious exchange, when money accepted in one place is to be restored in another place. Since this is for the most part done by a written mandate, it is called exchange by letters (campsory letters). Finally, it is temporal exchange, by which present money is given for money to be paid after a certain time in the same or another place. This use is frequent in banks which, after retaining interest, pay in advance to merchants the monies owed to them (*sconto*).

Because exchange, especially temporal exchange, gave place to disguised usury, theologians were accustomed to raise various questions concerning various exchanges under the aspect of usury, which now have become entirely obsolete.

But today, after the war, the unstable ratio of exchanges among various nations has enriched some with immense profits, while others have suffered great losses of fortunes from it. Deceivers are to be marked with injustice, who vitiate exchanges by frauds.

Corollaries or Scholia. 1. He who has received money for paying another's debt can exchange that money into another legal money, provided he does this not only for his own gain, but also at his own risk.

What if there is question of Mass stipends? Here various cases seem to have to be distinguished. a) Titius received a mandate to carry from France into Italy stipends of Masses, paid to him in francs. After he has arrived in Italy, since he could immediately hand over to the celebrants the sum such as he received, he can thus convert it into Italian money and pay for the Masses the Italian monies so obtained. So obtained, I say, and therefore not with the gain perceived from the change. For the same reason he himself could as it were act as money-changer for those monies, hoping after some time for a greater gain. But he could not, after this formal or virtual conversion has been made, if he has been cast down from his hope, hold the same conversion as void: he acted at his own risk, and therefore he must give as many lire as, on the day of this kind of conversion, he obtained or would have obtained. b) Titius, after undertaking the burden of celebrating Masses, since he saw that French money was standing below Italian money, fearing a greater loss, converted it into Italian money. But, since the turns have changed, he asks whether he can now commit those Masses to be celebrated by others by handing over Italian monies? Resp. He converted the French money as his own: he acted at his own risk. Therefore he must hand over either French money or Italian money, but observing, in the conversion, how much they are worth by the relative value of the French money on the day on which he hands over the Masses to others. - c) Caius, having undertaken the mandate of transmitting Mass stipends, and fearing lest the relative value of the money received should decrease, converted it into another. But the opposite happened: the money increased in value. What stipends must he pay? Because in good faith he wished to conduct that business usefully for the church, it is enough that he hand over the monies obtained by the conversion.

2. What if false money has been thrust upon you by an unknown person?

Resp. Properly false money, for example leaden money imitating silver, or false paper money, can in no way be spent again by him who has accepted it out of ignorance. The theft which you suffer gives you no license of stealing. But if there is question of true money which has been deprived of legal currency, one must see whether or not in fact it is accustomed to be given and accepted. If, in fact, it is commonly received, it will be lawful to spend it.

But he who has given money not received, although he has acted badly, nevertheless often will be excused from restitution, because the damage inflicted will not be established. For perhaps the other has already spent the money which he received. But in no way is it to be advised that adulterated monies be given as a gift to beggars: thus they would tacitly be invited to frauds.

VIII. On Lease-Hire

After the contract of sale, the treatment of the contract of lease-hire, by which merely the price of use is sought and paid in place of the price of the substance, was for a long time sufficiently straightforward. But recent questions, as they say, social questions, whether concerning pacts between the master of labor and workmen, or concerning the very housing of the people, have made the matter very complex, which in this work it will be permitted to touch only in a few words.

I. - General Notion

Definition. Lease-hire is a consensual, synallagmatic contract by which someone, for a certain price, promises certain utilities of a thing or of a person for a certain time.

It is perfected by consent alone, although, in the external forum, proof of it is not always permitted to be made in any manner whatever.

There is distinguished the lease of things and the hiring of works or of services. We use these latter words, by which we at once designate two species, lest, which today would be odious, we should be forced to place beside the lease of things a lease of persons.

B. - On the Lease of Things

I. Notion. Lease of a thing, whether immovable or movable, can be called a sale of utility; to which the rules of the sale of things are adapted, if you except certain sanctions of positive law.

II. Mutual Obligations. The lessor ought to effect that the lessee can peacefully use the leased thing, during the whole time of the lease, in a good state, with the utility and advantages which it had when the agreement was made. He guarantees against eviction and defects, at least hidden ones. Lesser repairs are usually incumbent on the lessee, greater ones on the lessor.

The lessee ought to use the leased thing after the manner of a good father of a family, and for that use for which it was destined. He is responsible for custody of the thing. He ought to pay the price at his time and to stand by the agreements. By the destruction of the thing, at least if the whole has perished, but not, of itself, by the death of the parties, the contract is dissolved. But what positive laws establish must be observed.

III. Various things concerning this contract are usefully attended to by the moral theologian.

1. Although lease of a thing, in Italian and French law, confers no right in the thing, nevertheless, by the disposition of the law, it gives to the lessee a right of use independent of the person into whose ownership the thing may have come. That is, successors, even those who succeed the parties by a particular title, ought to carry out the agreement previously made.
2. Concerning the time for which a thing is leased, let these things be noted. Both by canon law and by more than one civil law, a lease beyond nine years exceeds simple administration (cf. can. 1541, §2, 3°; art. 1572 of the Italian Code). - Laws not rarely establish a maximum time within which either certain things or personal services may be promised.

Thus, in Italian law, agreements concerning the cultivation of uncultivated fields are permitted to be made for a hundred years; but immovable things, of themselves, cannot be leased for a time greater than thirty years. Houses, however, can be leased for the life of the lessee and for two years besides. - But a lease for nine years is not rarely made in such a way that in the third and sixth year it becomes open to the parties to withdraw from the contract, provided that the intention has been intimated in good time. Otherwise, when the day arrives, the contract continues by the thing itself. - If no day has been established, the nature of the things and customs will have to be observed, so that it may become known to what term the lease is extended. A stipulation of tacit renewal of the contract, if a contrary will has not been manifested some time before the day to which it runs, is altogether admitted. Indeed, if the lessee has not been warned about leaving the thing, and peacefully continues

the use, a new lease will be judged to have been tacitly made, under the same laws as before, not however of itself for the same time, but rather as if without a day. Thus it is established in Italian law, arts. 1592, 1593.

Positive laws must be consulted concerning the faculty which the lessor has of leasing the leased thing to another; and concerning the taxes which are to be borne by each party.

3. A tenant-farmer or tenant cannot, at his pleasure, change the customary destination of an immovable thing: as if he should wish to convert an estate into a field, or a shop into a private house. But the consent of each party is necessary.
4. If the lessee himself, with the owner consenting, has begun a business, and thus by degrees has procured that buyers of certain things should come there, present-day laws incline toward this: when, on the day arriving, he departs, he obtains a right to a certain compensation for the value which has accrued to the leased thing by his industry. That right is called recognition of commercial property, which we compare with so-called literary and artistic property.
5. Since it now happens rather often that several tenants inhabit various parts of the same house, it comes about that, by a presumption sometimes rather arbitrary, the law defines the obligation of bearing the case of fire as common to the tenants. Thus in Italian and French law (cf. Italian Code, arts. 1589, 1590; French Code, arts. 1733, 1734, as it was corrected on 5 Jan. 1883).

If the house has been insured, the one who insured the thing and made the owner indemnified succeeds to his rights against those who gave cause to the damage.

6. Several laws are accustomed to grant to the owner of an immovable thing a legal pledge in the movable goods which the tenant has brought into the leased thing. Thus it comes about that the seller of merchandise cannot, without the consent of the owner, recover the merchandise which he had committed to the shopkeeper to be sold.
7. Since the lease of a field contains something of chance, no remission of price would be owed to the lessee from strict justice on account of unusual sterility; nevertheless laws are accustomed to grant some remission from equity. Cf. arts. 1769, 1770 of the French Code.

Frequent in Italy is the use of leasing rural estates under this law, that the fruits are divided between the lessor and the lessee (*mezzadria, masseria, colonia*). On this agreement cf. Code, arts. 1647-1661. Special agreements also are customarily made concerning the leasing of herds of large or small cattle (*locazione a soccida o soccio*). Cf. arts. 1665-1696.

8. If increases of things exceed every expectation, so that the price of the lease becomes altogether, and indeed by a great amount, below the just price, especially if it is paid in fictitious money, justice itself and the principles concerning the just price seem to require that the tenant-farmer increase in equitable proportion the rent promised by him.
9. Since in many states dwellings were found with difficulty, in more than one nation laws were passed which prevented lessors from expelling lessees, or from increasing prices beyond a certain amount. These laws had not a few detractors and reprovers, so that there was doubt

about the very justice of the laws. Yet because these matters are usually very obscure and the laws were promulgated with a right intention, the tenants whom they favor can stand by them, nor does there seem to be present to the lessors a right of occult compensation. The presumption is in favor of the legislator. This is not destroyed by complaints.

C. - Lease of Work

I. Notion. By lease of work, a work to be completed is promised directly.

But he who, for a certain price, undertakes a work to be completed is the contractor (or undertaker, receiver, *appaltatore*, *entrepreneur*) of the work, which the other party is judged to lease.

Positive laws are accustomed to distinguish a contract of carriage, a contract of completing a work from material which the lessor has supplied, and a contract of completing a work and at the same time furnishing the necessary material.

When there is question of carriage, they are accustomed to urge rather severely the obligation which the receiver of such a business has of carefully guarding the things committed to him and of providing for their integrity.

Contractors for a work are responsible for the deeds of the workmen whom they use.

II. Mutual Obligations. 1. The contractor ought to complete the whole work, within the established time, at the stated price, even, of itself, if the material and labors have become dearer, just as he had promised, and indeed by his own labors, if the work requires skill.

2. The lessor ought to receive the completed work and pay the promised price on the appointed day.

What if the contractor (or undertaker of the work) complains about an agreement harmful to himself?

He ought not easily to be believed. Nevertheless, extraordinary expenses, which had to be made from a plainly unexpected chance, are to be compensated to him. Most laws, Italian Code, 1643; French, 1793; Brazilian, 1246; Lusitanian, 1401; Spanish, 1593, expressly establish that, on account of increases of things and of wages, or even under pretext of changes concerning which no written agreement had been made, no supplement of price is to be paid to the contractor. The Swiss Code of Obligations, however, 373, admits that, on account of unforeseen circumstances, the judge may establish an equitable compensation or permit rescission of the contract.

But if an erroneous computation has been made, so that no one could have completed the thing for the agreed price, and the thing has sufficient value for the owner for whom the work is completed, the agreed price seems to have to be increased so that the contractor may receive at least the lowest just amount. Yet some oppose to that equitable payment the aleatory nature of the contract, by which a strict right of compensation would seem to be excluded.

I would rather distinguish between a material error which concerns present elements, as for example concerning the measure of the building, concerning the present price of things, and an error of foresight concerning future elements. The former, but not the latter, seem to be extrinsic to chance.

III. Special Things To Be Noted. 1. Several Codes dissolve the contract by the death of the contractor, so that the lessor ought to pay only in proportion for what is useful to him in the work begun. Thus the Italian Code, 1642; French, 1795, 1796; Lusitanian, 1403; Swiss, 379; Dutch, 1648; while better, in our opinion, the Austrian Code, 1162, and the Spanish, 1595, establish this only when personal skill was required.

2. Not a few laws permit the lessor to renounce the work, provided that he reimburses expenses and pays the contractor what is of interest to him, and consequently also lost profit. Cf. Italian Code, 1641; French, 1794; Brazilian, 1247; Spanish, 1591; Dutch, 1647; Lusitanian, 1402. On the manner of computing what is of interest, cf. the Brazilian Code at the cited article, and the German, 649.

3. Undertakers of a building, according to several laws, ought to guarantee its quality for several years: for ten years, according to the Italian Code, 1639; French, 1792; Dutch, 1645; Spanish, 1591; for five years, according to the Brazilian Code, 1245; Lusitanian, 1399.

4. For some years it has been usefully established that, in undertakings of works, a stipulation should be made of a fitting minimum wage to be paid to the workmen. - On agreements among undertakers of works cf. above, n. 472, 4.

5. In great factories themselves, and in the working of coal mines, it comes about that certain partial leases of work are offered to workmen.

6. Here, of itself, something would also have to be said about advocates, physicians, and others who are accustomed to promise useful service. The Austrian Code mentions them in § 1163; but in §§ 1164-1171 it defines the juridical relations of author and publisher. Advocates and physicians will be treated more conveniently in the chapter on offices.

D. - On the Hiring of Services

General Survey of the Argument. The civil Code of France assigned only two articles to the hiring of services: by one, 1780, it sanctioned the principle of liberty: "Services can be promised only for a time or for a definite business," while it by no means prohibited the hirer or master from obliging himself to keep a workman or servant for his whole life. By the other article, 1781, it said that faith was to be given to the assertion of the master or lord concerning the amount of the wage, concerning the payment of the wage of the preceding year, and concerning partial payments of the current year. - This latter article was afterwards suppressed in France and elsewhere, so that that whole business was contained in one article in the Italian Code, 1628; in the French, 1780; but in four articles in the Spanish Code (1583-1587) and the Argentine (1623-1626). Soon, however, the Legislator had to establish things more diligently concerning works to be leased and hired. Several laws, social laws as they say, were added to the Codes; or, as in Holland by the law of 13 July 1907, new sanctions were inserted into the Code itself, so that no fewer than 77 ample articles with a new section were added to the Code. In the Code of Germany a proper title, arts. 611-630, is assigned to the hiring of services (*Dienstvertrag*), which is followed by the title *Werkvertrag* (631-651), which treats of a promised work or lease of work. The Swiss Code of Obligations itself distinguishes *Dienstvertrag* (319-362), *Werkvertrag* (363-379), and *Verlagsvertrag* (380-393), on the publication of books. The Brazilian Code, under the general title concerning lease, distinguishes lease of things (1188-1215); hiring of services,

1216-1236; lease of work (1237-1247), which it calls undertaking of work. But in separate chapters it treats of the publication of scientific, literary, etc., works (c. 9, arts. 1346-1358); and of scenic exhibition (c. 10, arts. 1359-1362). The Mexican Code, however, distinguishes the rendering of professional services, which it governs by arts. 2406-2415 and by the dispositions concerning mandate, and the contract concerning works or concerning work. It distinguishes domestic services (2434-2457), day labor (2458-2468); from work to be done in general (2469-2509), it separates carriage (2510-2531), technical instruction (2532-2539), and lodging (2540-2544).

Concerning these laws, these things must be observed. While some Codes preserve the common name of lease-hire, others, better, abstain from that name, since diverse contracts concerning works can be made. Some Codes treat more confusedly every kind of works and services, while others, better, distinguish the various kinds more accurately. With Roman law, some, for example the Mexican Code, subject offices of a nobler nature to special norms; others, for example the German Code and more explicitly the Brazilian, consider all things commonly.

Various Manner of Contracting Concerning Works. In various ways one party can freely promise his service, and the other the recompense of the service. For:

1. There can be made an agreement of its own kind, more familial or personal, by which a person in a general way promises services agreeable to his condition and capacity, insofar as he is received into the family of another, who directly provides the former with the necessary and fitting things of person and family. Money, if it is supplied, is judged to be such as permits that now, with food, roof, and things supplied being considered, and later, sufficient industriousness being supposed, that person can live according to his state with his own. In such a case, he who furnishes services places himself under the direction of another, but the other, or master, provides for the needs of the servant as they are in the concrete. Therefore according to varying health, number of children, if there is question of married persons, that provident solicitude will vary. By force of this kind of contract, persons of every social cultivation were received as guests among kings and princes, and a similar kind of relations is still not infrequent between domestic servants and the head of a family.
2. Without strict commutation, a stipend of fitting support can be promised, which is measured according to the common necessities of him who promises services. These necessities vary according to the place which, from the kind of services, the promisor holds in society. This especially comes into use when the utility rendered transcends the economic order.
3. Between workmen and masters of labor a certain partnership can be entered into, whether complete or incomplete; whether manifest, or latent in the wage itself. A partnership is complete when all profits are divided between workmen and masters according to the proportion of contribution; it is incomplete if the workmen are merely admitted to a certain communion of profit, arbitrarily established. It is manifest where what each one is going to receive is defined from the considered outcome of the business, especially if something must be supplied by the workmen themselves when matters happen otherwise. But the partnership is covered by salary if a stable wage is indeed promised to the workmen, but one which is prudently estimated in advance from the circumstances of the business itself to which they give service. Then a double security is furnished to the workman-partner: by payment of the

stated sum he is taken away from the danger of losing, as it were, his lot (*capitale-lavoro*), and for uncertain profit he receives less, but certain, profit. But both of these have already been computed in the defined salary.

Finally, by reason of those contracting, it is now necessary to distinguish individual contracts and collective contracts, which are deliberated and agreed between masters of labor and an association of craftsmen, so that the immediate obligation falls upon a moral person.

At present, we are treating only of lease-hire; and since previously we have treated of other mutual offices of workmen and masters and of strikes themselves (cf. n. 329-334), it will be enough for us to sketch in a few words the norms of a just wage.

On the Just Price of Hired Services. 1. Notion of the contract. By this agreement, the workman leases his services to another who strictly hires them; which the most ancient usages have approved, and therefore it is shown not to be opposed to human dignity. Although the contract of some partnership provides more for the same dignity, since it is made between persons who, even after the contract, act as equals.

2. Estimation of the wage. a) This must be held first of all. Commutative justice wills this and at the same time requires nothing more than that the value of labor be compensated by a price. Since that value does not vary according to the person laboring, it is worthy of equal compensation, whether there is question of a celibate man or of a father of a family. - b) But divine Providence has attributed to labor this intrinsic minimum value, by which it may generally suffice for the end for which, of itself, it is destined. That end is that a man who is healthy and endowed with common skill may be able, according to his condition, to live decently and in his own time to found a family. Therefore that value, of itself, is to be compensated by the hirer of services. And from the reason adduced, a debt of commutative justice is demonstrated.

Some, however, appeal only to an obligation of legal justice. But these labor under a confused notion of that justice. For since legal justice urges acts of a special virtue, in the case this virtue will not be able to be anything except commutative justice, which we assert, or charity, which is quite clearly too little.

But does the intrinsic value itself have its proximate cause in the necessities of the father of a family? There are those who reason in this way. But are not those necessities shown to be manifestly extrinsic to the commutation which takes place between labor and price? Would not then, in place of a debt of objective reason, there logically succeed a debt of subjective estimation, which will vary according to the number of children and other circumstances? Would it not then be in the interest of the masters of labor to hire rather celibates or workmen without offspring?

But all these things are avoided if you see merely in the common condition of workmen an indication of the true value of human labor. Namely, just as, with a supply of milk sufficient of itself for nourishing infants, he filled the breasts of the mother, divine Providence gave to human labor that fruitfulness, so that the workman, using his powers well, could provide for himself and his own in normal circumstances. The workman yields this innate fruitfulness when he leases his services. The master of the workshop ought to compensate this to him by paying a salary which, with the fruitful

work of wife and older children computed and frugality first set aside, would be suited to honest support for the workman and an ordinary family.

But we do not call that an ordinary family which neo-Malthusian arts have reduced to one or another offspring; rather that family is ordinary which, from the observed laws of marriage, the craftsman in a definite region would generally have to support. For the support of a family of this kind, whether it is present or not, the salary cannot be unequal in normal circumstances.

c) Therefore the just salary by which, in normal circumstances, services are to be compensated from justice is composed of the absolute family salary and, besides, the quantity which according to common estimation is to be added, with the general prosperity of things considered.

You ask what is to be thought about the supplementary monies which are promised to fathers of families. By what title are they to be paid?.

1. This provision today is very highly to be commended by social utility, indeed by social necessity. But the utility or social necessity itself has a source not so noble and happy. For it coheres with the general and ever-growing tendency of imputing to the State or to collective solicitude burdens which formerly individuals gladly and not without some glory assumed, and of demanding a monetary wage for every benefit furnished. It is also the fruit, at least indirectly, of the propagation of neo-Malthusianism. For this multiplied celibate workmen or those without offspring. And since it flowed from egoistic pursuits of material pleasures, workmen, freed from a nobler solicitude, began to live more comfortably and to produce a general manner of living which fathers of families could not imitate. Hence fathers of families began to be held in contempt and mockery. Hence the neo-Malthusian arts themselves were increased. Hence fecundity, which is celebrated in the sacred writings themselves, was more and more esteemed no longer as a blessing and a cause of noble gladness, but as the imposition of an unwelcome burden. Funds established for distributing family subsidies intend in part to remedy these grave social evils; which indeed is most highly to be praised.
2. As to the title by which they are paid, the Legislator indeed, on account of the public good, can establish that from the sum of salaries a sufficient portion be reserved by which fitting sustenance may not be lacking for more numerous families. He can do this especially when, as today, the celibacy of many or the violation of matrimonial laws has been the occasion why not a few workmen began to live a too lavish life and to mock fathers of families to whom that luxury is not accessible.

Positive law being excluded, the factory owner cannot subtract anything from the just wage of others in order to give it to fathers of families. But since he is by no means compelled to admit workmen into partnership of profit, he can from profits received maintain funds by which family subsidies are paid.

Therefore, of itself or apart from agreement, the institution of family subsidies is governed not by the law of justice but by that of charity and sometimes of equity. But it becomes a debt of commutative justice if, which is to be desired, it enters into agreements which are made with the workmen, whether by a collective or by an individual manner.

Corollaries and Scholia.

1. He who without a just cause dismisses a servant or workman before the appointed day is held to damages, to be estimated generally from whether or not an occasion of equally good service was present. But when without the fault of anyone the execution of the contract is broken off, the matter is to be estimated from equity and received usages.
2. The workman also is unjust of himself if before the day he omits to furnish services. But since the obligation itself of agreements is contained within reasonable limits, the workman is excused by excessive difficulty of execution when most interrupt the services according to the agreement.

And it can happen that particular obligations undertaken between the master of labor and the workman carry a tacit condition annexed to them: unless a collective demonstration either of the workmen or of the factory owners impedes execution.

3. Unless some manner of partnership has intervened, salaries are to be increased, on account of extraordinary profit of the work, not from strict justice but from equity alone.
4. Without injustice, you cannot depress the wage below the lowest just amount because you wish, by a lower price of things, to triumph over rivals, or because you had to spend more than others in buying machines, in building the factory; or because from charity you hired miserable workmen, provided they render useful service to you. But you will not offend justice by the promise of a lesser wage if the workmen or servants, assumed from charity, furnish to you at least in part superfluous service; or if otherwise you are unable to obtain a moderate recompense for your own labor: for it will be permitted to prefer yourself to others. It also happens that workmen who already have fitting incomes from another source seek sometimes to increase these by leasing services outside their time, and therefore offer services for a stipend which is less than just. You are not compelled to refuse their spontaneous offer, or free acceptance.

But all special burdens, beyond the labor, are to be compensated by a fitting increase of recompense.

A lesser salary also can be paid, if that defect is compensated by other conditions, as often happens among domestic servants.

5. The nature of the contract concerning services to be hired and leased is subject to continual changes of the social order. Thus it is now less placed in the power of factory owners that, even when the day arrives, they may dismiss a workman by arbitrary will.
6. No less than for fathers of families of the common order, provision must be made for fathers of families of the middle order. Indeed, for some years their condition has been made worse and more troublesome than the lot of mechanical workmen.

IX. On Partnership

I. Notions. Partnership (as a contract) can generally be defined as a contract by which two or more obligate themselves to pursue some end by common work. The end then can be economic or transcending the economic order.

But in Latin law they have been accustomed to reserve the name partnership for unions in which an economic end or pecuniary utility intervenes. Societies which have an immediate end of piety, religion, or even, as many wish, of pleasure, for example for exercising certain games, are not juridically partnerships but rather are called associations, and the agreements to which they give place are referred to innominate contracts. Juridically, therefore, quite commonly:

Partnership (as a contract) is a consensual, synallagmatic contract, by which two or more obligate themselves to contribute a thing or service into communion of use, or principally of profit.

Into communion of use, as if several farmers should agree concerning the common use of horses or of a machine.

Into communion of profit, when they propose to exercise together a lucrative business. Then each one contributes something or places something in common, whether industry, or money, or another thing, or credit, or the name itself, under hope of profit which will be divided among the partners.

II. Divisions. 1. According to varying comprehension, partnership is distinguished as universal or particular, according as it embraces some universality either of things or of services, or only certain businesses.

2. According to the kind of acts, it is distinguished as mercantile and civil.

Mercantile partnership is entered into principally for acts which are considered commercial; civil partnership for acts of another kind, and it obligates the partners without limit.

Mercantile partnerships have usually been governed by their proper commercial Code, or by peculiar laws; civil partnerships by the civil Code. In Italian and French law, civil partnerships are not juridical persons unless, where there is ability, they have put on the form of a mercantile partnership.

3. According to varying undertaking or obligation of patrimony, mercantile partnerships are constituted in such a way that either all partners obligate their patrimony without limit and in solidum; that partnership in Italian and French law is called *in nome collettivo*, *en nom collectif*; or some are obligated without limit, while others commit only a certain force of money; this in Italian and French law is called *in accomandita*, *en commandite*; the *accomandatarii*, *commandité* (one or more), are obligated without limit, the *accomandanti*, *commanditaires*, only within the limits of the contributed money; or no partner is obligated without limit: this is an anonymous company. For the rule of Italian and French law is that partners whose names are expressed in the social title are obligated without limit. An anonymous company is designated by a certain peculiar denomination, for example Fiat (cf. Italian Commercial Code, 76; French, 19).

In England, practically all companies do not obligate the partners without limit (*limited liability*); nevertheless, in partnerships, General partners are obligated without limit, Limited partners according to their contribution.

In the U.S.A. companies are assigned to four kinds: Corporations, moral persons which are created by public authority; unincorporated associations, which are not juridical persons; partnership, which is similar to our partnership acting under a collective name; and joint-stock company, which in a certain way is intermediate between corporations and partnerships.

4. According to its relation with third parties, it can be manifest or hidden.

Under another respect, partnership is distinguished as cooperative, which has these proper notes: that, with the agreement of partnership preserved, the number of partners and the capital are changed, for example, instead of stable capital a minimum capital is indicated, but rights cannot be ceded to outsiders (cf. Italian Commercial Code, art. 219 ss.).

Finally, he who has a part of the capital is called a shareholder (*azionista*); he who has merely given money as a loan is called a bondholder. Wherefore shares are computed among the goods of the partnership (*actif, avoir social*), and obligations among debts (*passif*).

From positive law and from the agreement one must gather what rights in administering common affairs belong to the individual partners, and who can obligate the partnership.

Although they use varying names, positive laws agree sufficiently among themselves. Concerning the notion of partnership as it is handed down in civil Codes, this should be observed. While most Codes, imitating the French (1832), posit as essential an intention of utility estimable by price (thus the Argentine, 1648; Spanish, 1665; Italian, 1697; Lusitanian, 1210; Mexican, 2219; Dutch, 1655), some more recent Codes, in a more general way, indicate some merely common end as the object of partnership. Thus the German Code, 705; Swiss, 530; Brazilian, 1363.

The rule of justice is equality, here to be defined, the intention of giving being excluded, from the geometric proportion between contributions and profits. Of itself, the danger is common. But, standing with natural law, a partner can free himself from that burden, provided that he compensates the inequality from a greater contribution or from a smaller part of the profit. How profit is equally divided is to be left to common estimation and the judgment of prudent men, care being taken that the agreement has been freely made. Nothing prevents a part of profit from falling to contributed labor, just as to contributed money. A leonine partnership, by which the whole profit is assigned to one of the partners, is unjust and null.

When nothing else is defined, equal parts are customarily made among the partners.

On equality in dividing profit and damage, Lugo treats rather fully, *Iust*. d. 30, n. 10 ss. Since these matters are in moral estimation, authors agree that a division which has been freely agreed upon can with difficulty be condemned; provided however, says d'Annibale, II, 175 (13), that, the intention of beneficence being excluded, each one, if the matter has gone well, can receive at least the price which he would have obtained by leasing the thing or service.

But in great undertakings a few constitute matters by their own judgment, while most are ignorant of the very conditions of the partnership. Therefore many occasions of becoming rich without cause, or beyond the merit of the cause, are offered to men of insufficiently fearful conscience.

Who will be able to say how many things are done unjustly? Let us at least inculcate this universal principle: that the right of profit must be tempered to the value of the contribution; and that, with the name therefore given, or by other open or disguised modes, partnerships whose lot is either known to be unstable or is simply unknown cannot honestly be recommended.

X. On Mandate and Management of Affairs

I. Mandate is a consensual contract by which something to be done is committed to another who undertakes it (art. 1737, Italian Code). - It differs from procuration, by which merely the faculty is given to someone of doing something for another. - It is of itself gratuitous. If a wage has been promised, it differs from lease of work in this, that the mandatary acts for another. Mandate can always be revoked; but the mandatary who was ignorant of the end of the mandate acts validly. It also ceases by the death or interdiction of either party.

Because the mandatary does not act in his own name, the juridical capacity which he would have to have in order to contract in his own name is not required in him. Thus a minor can be a mandatary (cf. Colin and Capitant, II, 710).

II. Management of affairs is, as it were, a presumption of mandate, by which someone usefully undertakes the affairs of another to be managed, who neither by express word nor tacitly, by silence, seemed to give a mandate. The owner, whose work has been usefully managed, ought to refund necessary or useful expenses and to observe agreements duly made; and, more probably, from natural law, to compensate the labor of the agent by a fitting wage. Positive laws must be approached.

Ratification, by which someone approves what another has done for him, in law is equivalent to mandate.

XI. On Deposit and Sequestration

I. Notion. 1. Not everyone who hands over some thing merely to be kept properly intends to make a contract of deposit. For, trusting in the honesty and prudence of another, he can merely materially commit a thing to another without any peculiar obligation of the latter besides that which every man has of not stealing. A religious himself can accept a deposit of this kind without injury to the vow of poverty; while a contract of deposit, without the faculty of the Superior, does not seem able to be celebrated validly or licitly by a religious. Yet it is disputed whether acceptance of a deposit is opposed to the vow of poverty. Molina affirms this, *De Contractibus*, d. 525, n. 3, on account of the obligation undertaken, while Genicot-Salsmans, II, 93, holds the negative side probable, because the depositary "exercises no act of ownership over the thing deposited." We judge the argument of Molina more effective, which is by no means touched by the reasoning of Genicot.

I. The contract of deposit is a real contract by which one party hands over to another a thing estimable by price to be kept, and the other obligates himself to keep it and to restore it in its proper species. Cf. Italian Code, art. 1835; French, 1915.

II. There is distinguished 1. voluntary deposit and necessary deposit, which someone is compelled to make by an unforeseen event. It is sometimes called miserable. The burden of proof for this deposit is lightened.

To necessary deposit is joined the deposit which travelers are judged to make with public innkeepers of things which they have brought with them. Innkeepers at the same time have these things pledged, and they ought to furnish security concerning their entire restitution. Yet their obligation is tempered or subjected to certain conditions if excessive sums of money are brought.

2. Deposit can be of an ordinary thing, or of a litigated thing. Sequestration is a species of deposit by which a litigated thing, whether by the private will of the claimants or by the authority of the judge, is committed to some third person, who himself is called the sequestrator, to be kept.

III. Obligations. The depositary ought diligently to keep the thing. He can use the deposited thing only from the express, or at least presumed, will of the depositor. If use of a consumable thing is permitted, the deposit is called irregular, and differs from loan only by the faculty which the owner has of demanding the thing back at will. It is clear that the thing must be restored to the owner asking for it. And it seems foreign to the sense of a certain more perfect honesty that someone should compensate himself from a thing deposited. Yet a strict prohibition of natural law is not demonstrated. Positive laws are accustomed to concede only this, that the depositary may exercise the right of retention for obtaining those things which the depositor ought to pay him on the occasion of the deposited thing.

XII. On Insurance

Notion. I. Insurance is an aleatory contract by which someone, for a certain price, obligates himself to answer to another for certain cases of chance or of prevailing force.

The printed formula which is usually employed in entering upon this agreement is called in Italian *polizza*, in French *police d'assurances*; the money to be paid after stated intervals for insurance is called *premio*, *prime*.

II. It is distinguished: 1. from the very varied event for which security is promised: for the case of fire, hail, plague, shipwreck, theft, misfortune, old age, sickness, death, or even life up to a certain age.

2. From the object insured, there is real insurance, whether of things or animals, and personal insurance, or insurance of persons.

3. Personal insurance is made, some individually, some collectively; some in the name of the person insofar as he is such, some insofar as he belongs to this or that social class: this is called social; thus there is more than one insurance of workmen.

Especially to be remembered is life insurance, which, from the Italian banker Tonti, of the seventeenth century, its inventor, is sometimes called a tontine, although by this word a certain form of this insurance is more properly designated. Life insurance properly looks to this, that the insurer, for certain annual payments, obligates himself, upon the occurrence of someone's death, to pay a definite sum either to the heirs (whose need is thus provided for) or to another designated person. Sometimes an agreement is made by the contrary reason, so that the insurer owes a sum if a definite person has reached an age, for example, of 18 years; and not rarely each manner is mixed: mixed insurance. Lesser insurances also are frequent, by which merely funeral expenses are promised.

Of the same kind are insurances against sicknesses. And rather than an agreement being made with outsiders, several societies exercise mutual insurance, so that the same persons who are insured are the insurers (*Società di mutuo soccorso, Mutualità contre l'incendio*, etc.).

Under the name of reinsurance comes, as it were, a second insurance, by which either the insurance societies themselves, by federation or by a greater society, guard themselves from the necessity of giving an excessive amount of money for great misfortunes, for example shipwrecks, or they favor their insured members with greater protection promised by federated societies. Thus, for example, a society of mutual assistance pays sick workmen for some days a daily wage or a quota part of it. But if sickness perseveres beyond a certain time, the federation of societies is accustomed to provide for the same persons. Reinsurance, therefore, is another insurance either of societies or of persons who are insured.

Norms. 1. The justice of the contract requires: a) an uncertain event, or at least one unknown to each party; b) a just price, so that the premium to be paid corresponds to the danger, with account taken of expenses. The price is assessed by laws, morals, and the judgment of prudent men.

Where there is no legal monopoly, it will be difficult to establish that the price was excessive. But by well-constituted mutual societies, not moderate expenses are spared.

2. One must abstain from unjust frauds. a) If the insurer is not solvent, he will not be able to retain the price except according to the proportion of the part which he made secure. - b) The insured ought to declare the whole danger, which afterwards he is forbidden to increase. Otherwise, according as fraud gave cause to the contract itself or merely to its conditions, the contract will be null by natural law, or will have to be reduced to equity, so that for the increased danger the price is increased and the obligation of compensation is diminished. The more severe sanction of positive law will bind at least after the sentence of the judge. - c) Nor can he demand compensation beyond the damage which he has suffered or outside the cases promised. Yet he can accept a greater amount than the insurer freely offers (sometimes in order to attract) or than arbitrators establish. Damages which arise from grave fault of the insured or of connected persons are customarily excluded; which grave fault, before the sentence of the judge, seems able to be taken as theological. And perhaps the agreement made is understood in such a way that the insurer ought to demonstrate the fault.

Can the same thing be fully insured twice? Of itself, certainly. But positive laws and often the stipulations of the contract themselves stand in the way. Similarly, unless the insurer himself has consented expressly or tacitly to the fiction, insurance of a quantity or value greater than that which is in truth present is valid at most only for the true quantity or estimation. If, after insurance has been made, the amount of insured things has been diminished, you will judge from the express or tacit agreements what right follows from this.

You should observe, in the partial destruction of a thing, that only the proportional part of the promised sum is paid, even if it were unequal to repairing the damage.

He who insures life ought to declare diseases insofar as this is required by the insurer. He who has unjustly concealed a hidden disease from which he was certainly going to die shortly has made the contract null and can receive nothing. He who has unjustly concealed other diseases will not be able to retain anything except what, the disease being known, he would have obtained for the premium paid. If however, contrary to expectation, he has lived longer, the defect of the contract is healed, "because the contract is implicitly renewed as often as the price is paid and accepted," Tanquerey, III, 918. On these cases, well and broadly, Gopfert, *Moraltheologie*, 482, n. 19.

On account of insurances which often protect the insurer himself, it is not so easily established what society has suffered damage from unjust fraud, for example from voluntary fire. The matter can be committed to those managing the society. There are also those, thus Lehmk. I, 1359, who think restitution can be made to the poor, because rather innumerable and uncertain shareholders sustain the damage, since the premium has been increased for them from foreseen frauds. Yet the Sacred Penitentiary solved the matter otherwise, ordering that restitution be made to the society.

The contract of insurance gives occasion to frauds which cannot be numbered. Indeed, insurances on the lives of infants have prepared crimes which had to be met by social laws. Let us inculcate more honorable morals, according to our powers, and rather recommend mutual insurances, as was done in Holland among the clergy themselves. For mutual insurance contains no industrial business.

Present-day laws of many regions not only have procured social insurances but have also commanded them, bringing it about that workmen especially, by money subtracted as if automatically from salaries, or even gratis from the treasury, are insured. Institutions of this kind, otherwise perhaps necessary, nevertheless labor under this not slight inconvenience: that they weaken in great part personal providence, which is accustomed to stimulate talent and industriousness at the same time and to prepare greater joys, and they multiply fiscal officials beyond measure.

XIII. On Wagering, Game, and Lottery — A. - On Wagering and Game

I. From natural law. 1. Notion of wagering and conditions of justice. Wagering (*scommessa*, *pari*) is a contract in which two or more, contending among themselves about the truth or event of some matter, mutually promise something to one another, so that it may belong to him who has attained the truth.

The justice of the contract requires: a) that the event be doubtful to each party, unless the other, warned, should obstinately have wished to wager, content with the possible error of the other affirming; b) that the equality of justice be preserved: unequal uncertainties must be compensated by unequal promises; and, if the matter does not depend merely on fortune, that there be an equal objective opportunity of conjecturing well, for example of considering the horses competing. If the inequality was known to the party wagering, one must see whether or not this principle can apply: to one knowing and consenting no injury is done.

2. Notion of game and conditions of justice. A game is a contract by which those playing agree among themselves that what each has deposited or exposed shall yield to the winner.

It is distinguished as aleatory, industrious, or mixed, according as fortune or art has the principal parts, or morally equal parts, in bringing about victory. The principal parts, I say, because almost always something must be attributed to each cause.

The justice of the contract requires that it be entered into freely, and that equality be preserved.

Can the more skilled contend with one much less skilled, without compensation for the inequality? The matter is disputed. But unless he has deceived the other, the latter seems to have accepted the game at his own risk.

Unlawful frauds and arts must be absent. Otherwise, the profit would have to be restored, besides that which the other, who had had the probability of winning, lost by the fraud, according to the

proportion of his hope.

Rules and customs indicate which frauds are tolerated or are held as unlawful. Thus it is lawful for one playing cards to simulate fear, while he has the best cards; to inspect cards visible from the negligence alone of the other; during play, to recognize cards from a mark which they already bear, but not from one which he himself has put on them.

3. Moral honesty. Neither contract is illicit of itself. But from a positive prohibition, such as has been made for clerics, or from the vice of prodigality, or from the damage which you inflict upon others for whom you ought to provide from justice or piety, it can be opposed to various virtues.

And, considering the many crimes to which they give occasion, those are to be called guilty of grave sin of scandal and cooperation who open public buildings for great games, or sustain or foster similar institutions with money. Nor rarely is excessive profit established for those governing houses of this kind and for shareholders. Houses of this kind cannot be tolerated unless perhaps the reason of avoiding a greater evil should require it.

Concerning canonical prohibitions, cf. the tract on clerics and religious, III, 18.

4. Corollary. Those wager or play invalidly who, because they have nothing, cannot give to the other a useful right to the prize, or who are unwilling to obligate themselves by it, and therefore play with the intention of using a law which removes the obligation of paying. He who has determined merely to use a law which denies an external action, since he contracts an obligation, does not play invalidly, but already in affection sins against justice. - A wager or game by which a great amount of money is exposed at one time, so that in the one exposing it there is open prodigality, is probably null. (Cf. St. Francis de Sales, *Introduction to the Devout Life*, p. 3, c. 29.) Wherefore neither can the vanquished be compelled to give nor the victor to restore.
5. Scholion. A son of a family is not of itself forbidden moderately to spend something on an honest game from monies which he has received from his parents for support: such is presumed to be the will of the parents. And, at least in the same game, he can expose whatever he has won, since for this too a tacit faculty is judged to have been given. And provided the matter is moderate, the other player ought not to interrogate the son of the family about his right of playing.

II. From civil laws. 1. Civil laws agree in denying a forensic action for exacting what someone has won from wagering or game, unless perhaps, as not a few Codes do after French art. 1966, it has been of that kind which either teaches arms or exercises the body (a foot or horse race, ball, so-called boxing, etc.).

In this case, however, the French Code gives judges the faculty of rejecting an action by which excessive money is sought. But observe that the exception of itself profits only the actors, not wagers in which outsiders are parties, although their contest may have furnished occasion for these. Moreover, gaming debts are thought to be also monies lent during play. - The Mexican Code,

however, 2771, grants an action for exacting a debt contracted in a lawful game, if it does not exceed 100 pesos.

2. Most laws at the same time deny that what has been paid can be repeated, unless frauds or deceit can be alleged, or unless, as the Swiss Code of Obligations 511 has, the matter treated is irrational. The Portuguese Code, however, art. 1512, permits that what has been paid on account of a merely aleatory game be repeated.

But observe that monies exposed on tables are held as paid in advance.

3. Now the question arises concerning the obligation of conscience. And that an obligation proceeding from an honest wager or game ought to be paid voluntarily seems to be established from the words of the Austrian Code, § 1271: wagers made in good faith and otherwise lawful oblige when the price has not only been promised, but also in truth paid or deposited. The same § 1271 establishes this concerning games. - Concerning Spanish law, on account of the words of arts. 1799-1801, by which it gives an action for games and wagers not prohibited, and at the same time art. 1798 denies an action for debts of an aleatory game, the obligation of conscience can be doubtful. Say the same concerning the Mexican Code, on account of the similar words of arts. 2272-2278; and perhaps concerning Argentina, on account of art. 2063. The Portuguese Code, art. 1511, does not permit the contract of game to be a mode of acquiring goods. The French Code, 1967, and the Italian, 1804, seem to recognize a natural obligation clearly enough; yet account must also be taken of the jurisprudence of tribunals, which in France consider an obligation contracted from game as of a shameful cause (cf. Colin and Capitant, II, 694); the more common opinion in Italy recognizes a natural obligation (cf. Pacifici-Mazzoni, V, 2, p. 377); nevertheless several hold as more probable, when the game is merely aleatory, that the cause is shameful and produces no natural obligation. Yet what has been voluntarily paid cannot be repeated, on account of the principle: shamefully given, shamefully repeated.

Finally, the laws of England and of the U.S.A. consider the contract of game as null. Can what has been paid be repeated? The laws of the States vary. (Cf. Slater-Martin, *A Manual*, etc., c. 13).

Conclusion for conscience. 1. What someone has received as profit from a game otherwise honest, he can keep, at least until the judge has commanded restitution. - 2. Those who have been defeated and do not owe an excessive amount of money, we shall exhort to pay the debt. - 3. Nevertheless, to impose a strict obligation will generally be difficult; nor will absolution have to be denied to him who wishes to use the civil law. Cf. Lehmkuhl, *Das bürgerliche Gesetzbuch*, at arts. 762-764; *Theol. mor.* I, 1372. The common persuasion of upright persons in the region also must be observed.

B. - On Lottery

I. Notion. 1. A lottery by which, after the various parts of an inheritance have been constituted, it is committed to lot to decide which portion shall fall to each person, or by which also concerning a matter doubtful or litigious among a few it is established that it will belong to him whom the lot has indicated, is altogether to be separated from lotteries commonly so accepted. A lottery or sortition of

this kind is entirely honest, and is juridically efficacious, as is expressly established by several Codes, for example the Austrian, § 1273, and the Brazilian, 1480.

2. The lottery of which we treat here is a contract by which, with several paying a certain price toward a certain thing or toward a certain sum of money placed in common, a right of the prize is acquired if the drawing should fall to someone.

II. Moral judgment. 1. The contract is just, provided that both the ratio of the prize and of the hope correspond to the money which the competitors pay; nor may the master of the lottery make excessive profit certain for himself. Therefore of itself, where he sustains no danger, as merchants who sell goods by the help of lottery, the profit ought not to exceed the fruit which honest business dealings are accustomed to bring. Often, however, some reason of beneficence is added. And in official lotteries the State reserves more for itself by way of tribute, not at all greatly to be recommended.

2. Lotteries, however, give place to many abuses. Wherefore laws ought to take care that they do not permit them except for just reasons; and they are accustomed to impede excesses by various cautions. Thus they require that titles which give hope of a great but uncertain prize, nevertheless meanwhile bear a modest annual interest. The prize itself is not to be counted among the fruits of the titles, but is the price of an aleatory sale promised in advance.

III. Positive laws are accustomed to distinguish lotteries permitted by public authority, whose obligations they sanction, and other lotteries which are either declared null and prohibited or are equated with games.

Appendix on Bourses

I. Notion. So called from the sign of an inn or place at Bruges where merchants were accustomed to assemble, a Bourse is called a market where goods are present only by samples (*campioni*) or by titles. A bourse of goods and a bourse of securities are distinguished. Besides various and true dealings of the same kind, very many others are mixed with game or wagering, or are discharged by mere game. The reasons are often more entangled; yet they can be reduced to these almost simple forms.

1. Market for a day. Values or goods to be handed over afterwards are now bought-sold, namely on the day on which "liquidations" are accustomed to take place (for example the 1st and 15th day of each month), for the price which will then obtain. According as the thing has increased in price or has become cheaper, either contracting party will carry off a profit from the contract, which thus is mixed with a certain wagering (*agio*, in the broad sense). Often, on the appointed day, nothing must be handed over, but only that profit must be paid. The matter then ends in game.

That game is merely aleatory, when the unskilled indulge in it (which happens too often); but it must be called mixed when skilled merchants make a prudent estimation of the future event.

2. A market with premium is a purchase-sale under penitential earnest-money, in which either contracting party reserves to himself the faculty of rescinding the contract, with the premium

paid. When the day is approaching, he either confirms the market or rescinds it by paying the premium. These again can be done in a true or fictitious contract.

3. Certain accessory contracts of sale-back, etc., which contain a virtual loan of money or lease of goods, whose interest is the price, are respectively called *report*, *déport*. Or otherwise you have *report*, if the prorogation is made by the buyer; *déport*, if by the seller.

II. Moral judgment. These games of themselves are not unjust, but the principles concerning monopoly, concerning sale-back, concerning wagering and game must be applied. Very often excesses are to be reproved here, and justice is easily offended, whether because the wagerer often does not have whence to pay debts at the appointed time, which invalidates the contract unless the other was conscious of that unstable condition; or because, by deceit, for example by false rumors and reports, false increases or decreases of things are obtained; or because by buying up a monopoly is procured, by which thereafter abuse is made for changing prices more than is right, whence come the ruins of many who are deceived by these arts.

Nevertheless it is not fitting that, on account of excessive abuses, we should take away every goodness from these dealings. When passions, whether political or lucrative, do not attempt to turn everything upside down, the anticipatory estimations of experts contain useful indications for others and prevent values from either being depressed too much or increasing too much, but foster a certain tempered equilibrium. If, after a serious market for a day, a new agreement has diminished the obligations undertaken, that can incur no reprehension. And it also happens that by a market for a day which, as was agreed from the beginning, is to have its end without any handing over of goods or titles, someone seriously provides for his affairs. Suppose someone gives his labor to a dangerous business, so that he would lose everything if the titles which he holds should decrease in value. By now adding a fictitious sale of those titles, the damage will be compensated by profit and he will carry on the business securely.

Positive laws concerning these markets are uncertain enough. The German Code, 764, and the Swiss Code of Obligations 513 equate markets for a day which are concluded by payment of a premium with games. In a similar way the tribunals of Belgium and France estimate these things. What the judges of the Netherlands think is less certain (cf. Duynstee, op. c. n. 299). But particular laws perhaps enacted concerning this argument must also be observed. Thus the French law of 28 March 1885 pronounced legitimate all markets for a day, even if they should end in mere payment of a premium. But this is not understood to have been established concerning markets which from the beginning tended to this from the will of the parties. In Italy, the laws of 14 June 1874 and 24 Sept. 1876 protected by action, with a certain form observed, markets for a day concerning public titles. Concerning this argument cf. also arts. 73-75 of the commercial Code, the ordinance of 27 Dec. 1882, royal decrees 9 June, 13 and 14 Nov. 1907 (Pacifici-Mazzoni, V, 2, 377-384).

XIV. On Transaction, Compromise, and Concordats

I. On Transaction. 1. Notion. Transaction is a contract by which, by a mutual but onerous renunciation of the parties, a controversy concerning a doubtful right is ended. - Contrary to an amicable composition, it brings in no gratuitous cession even of a partial right, although it is often mixed with a certain condonation.

2. Norms. Transaction supposes a doubtful right; and the just price must be estimated from the probability which, at the moment of the agreement, the right had. It can be vitiated by various error. In our law it bears strict interpretation. He alone who can alienate a thing can transact concerning it.

This peaceful mode of ending lawsuits is so commended by the Code of Canon Law that the judge himself ought to employ exhortations toward obtaining it. Cf. c. 1925. Nevertheless the solemnities for the alienation of ecclesiastical things must be applied. Cf. c. 1927, which also guards against simony at least of ecclesiastical law, by being unwilling that a transaction be made "concerning spiritual things," whenever the payment of a temporal thing intervenes. Moreover, also in ecclesiastical matters, the civil laws of the place where the transaction is made are to be observed (can. 1926).

II. On Compromise. 1. Notion. Compromise is an agreement by which, for avoiding or ending a lawsuit, the parties commit the controversy to be settled to the judgment of one or more persons. If, from the intention of the parties, which is presumed such, they ought to settle the question according to the norm of law, they are called arbiters; but arbitrators, if they transact the business according to good and equitable (c. 1929).

2. Things to be observed. In ecclesiastical matters laymen cannot validly exercise the office of arbiter; and the solemnities for the alienation of ecclesiastical things are to be observed (c. 1930, 1931).

For certain questions to be solved which consist in fact, the judges themselves are accustomed to designate experts {experts}.

III. On Concordats and Similar Agreements. To the genus of friendly or coerced compositions there are to be referred various agreements which debtors who are not solvent enter into with creditors, or which even, through the mediation of a judge, are imposed on creditors. But one must distinguish:

1. An agreement by which the obligation of paying is merely deferred for the debtor: concerning this agreement nothing particular occurs to be said.
2. A voluntary cession of goods which the debtor has made so that creditors may cease from judicial pursuit. Besides that effect, does it also hold as a remission of the remaining debts? This wholly depends on the intention of the parties, from the words which they have used. But, in doubt, the negative parts are to be held, because, as several Codes have (for example the French, 1315; Italian, 1312; Dutch, 1474), remission of debt is not presumed but must be demonstrated. Creditors, however, were not compelled positively to reserve their rights. And perhaps, on account of the modest hope of obtaining more afterwards, they abstained from an express reservation, without any intention of condoning the remainder. If, however, somewhere the persuasion has prevailed by which an agreement of this kind would be understood as concerning full remission, then, with Genicot, I, 604, the silence of creditors could be held as a renunciation, since a different clause would be so easily placed in the agreement.

Concerning judicial cession of goods there is no longer reason for us to speak. For this was done lest the debtor be apprehended bodily on account of debts. But since now a favor of this kind is shown to have been conceded to every debtor who was in good faith, judicial cession of goods has become obsolete.

3. Merchants, however, make so-called concordats with creditors, by which they obtain either that imminent bankruptcy (*fallimento*, *faillite*) [1] be met, or that bankruptcy already made have an end. Concordats of this kind, at least if the greater part of creditors (defined by a certain ratio) have given assent, are confirmed by the authority of the judge and are imposed on the rest. In the U.S.A., and also in England, an unfortunate debtor can, at least in the external forum, obtain liberation from a judge.

It is now asked whether the debtor who afterwards can pay more than the proportional part with which the creditors were content or ought to have been content, is bound to supply the remainder, or whether, on the contrary, he can consider himself freed from every debt.

Writers go off into various opinions. Several, relying also on ancient authorities, deny liberation altogether unless liberation is expressly conceded; some, but rather hesitantly, seem to incline to the more benign parts, at least in some regions. And in truth various regions must be distinguished.

In France, cession of goods, from art. 1270, and a concordat do not take away the natural obligation. So the writers. The same seems to have to be said concerning Italian law, both on account of art. 1312, Civil Code, and on account of the chapter on concordats in the commercial Code, where not even an insinuation of full liberation is had. So also Ballerini-Palmieri, III, 513. The same seems to have to be said concerning Spain and other regions of Latin law and concerning Germany. In Belgium, the clause is customarily added: "provided that affairs do not become more prosperous" (*sauf retour à meilleure fortune*): that clause bears this interpretation, that the debtor owes nothing until he is able conveniently enough to satisfy all his debts. - In the Netherlands, there are serious reasons for thinking that the law concerning judicial concordats wished to extinguish every debt in conscience. Cf. Duijnstee, n. 235. - In England, both Crolly, *De iust. et iure*, III, 1232, and Slater, *A Manual*, I, 138 and 151, think that by liberation simply conceded by creditors, and by judicial liberation, debts are also removed in the internal forum.

In the U.S.A. the *Bankruptcy Act*, 1 July 1898, with additional changes in 1903, 1906, 1910, has such words that at least probably debts of conscience are extinguished. Cf. Martin apud Slater, p. 438-451.

Certainly, on account of the common good, so that hope may be restored to an honest merchant, the law can concede such condonation. But the debtor, in order that he may be able to use this favor, ought to have honestly done what the law ordered to be done, and to have abstained from every fraud in the concordat itself.

[1] For proper bankruptcy belongs merely to merchants. Others who are unable to pay are said to fail their creditors (*sont déconfits, tombent en déconfiture*).

XV. On Suretyship

1. Notion. Suretyship is a contract by which someone undertakes to fulfill another's obligation, in place of the principal debtor who is unable.

2. Effects. The surety is not bound except insofar as the principal debtor is bound, and of itself insofar as the latter's inability is juridically established. Remission of the debt conceded to the borrower frees the surety, but not conversely. It happens not rarely in practice that the creditor, consulting his own convenience, immediately seeks payment from the surety.

The obligation of the surety is of itself estimable by price.

Clerics are forbidden from suretyship, without consulting the Ordinary, c. 137. Cf. III, 17.

Suretyship pertains to the contracts which we call secondary, because they suppose another contract to which they are attached, so that they may strengthen its efficacy.

The two other secondary contracts, pledge and hypothec, were treated above where accessory real rights were discussed, n. 362-364.

Some things to be observed concerning contracts. 1. In present-day laws this is the general principle, which in these words is promulgated in the Brazilian Code, art. 129: "The value of declared will depends on no peculiar form unless that is expressly required."

Wherefore few contracts are solemn. In French patrimonial law there are only donation (931); nuptial agreements (1394); hypothec (2127); payment of a debt by which the one paying is at the same time subrogated to the creditor in his right (1250); subrogation in the legal hypothec which a married woman enjoys (art. 9 of the law of 23 May 1855). In Italian law art. 1314 enumerates eight cases of form imposed under penalty of nullity: which form can be a public instrument or a private writing.

In English law and U.S.A. law, the only solemn contracts are those by which dominion over immovable things is transferred {deeds and mortgages}.

2. The nullity of an act is not usually so great that it is non-existent, but it brings about that it can be declared infirm and void by a judge. Therefore he who possesses a thing from an invalid instrument nevertheless does not have it without title.

3. A condition of nullity must be accurately distinguished from a condition of proof. Thus in French law obligations which surpass 500 fr. in value cannot be proved in the civil forum, unless at least an initial written proof is had.

4. A condition of validity must especially also be distinguished from a condition to be fulfilled so that the contract can be opposed to third parties. Thus a contract concerning an immovable thing must be copied in a public office.

Summary

I. A contract is the consent of two or more persons in the same juridical agreement, while a quasi-contract is an honest fact, existing by the authority of law or by the voluntary will of someone, which produces a certain obligation of justice. A contract can be considered *in fieri*, or in its constitution, and *in facto esse*, or in the permanent effect which it produces.

II. Division. Contracts from the end of those operating are gratuitous, onerous, or mixed. They are gratuitous when the promise or performance of one party is compensated by no repromise from justice. Otherwise they are onerous, and indeed properly or analogically: properly, if compensation is

made by commutation, equal or unequal, with the very performance of the other party; and most properly, if the commutation is equal; improperly, if, without commutation, on occasion of the performance of the other, another title is verified obliging to a certain payment: as is the title of sustenance obliging to taxes to be paid for sacred ministries; and, in civil society, obliging to "honoraria" to be paid to him who has fulfilled a ministry of a superior order, as is a professor by whom knowledge is communicated, a physician by whom health is procured, an advocate by whom right is defended, a judge by whom right is rendered. A contract is called mixed in which only a partial price is required. - Moreover, the equality of commutation is either between the thing given and the thing accepted, as in sale, lease, exchange; or between rights in common things and contributions, as in partnership; or between two uncertain hopes, or between an uncertain hope and a present performance, as in aleatory contracts, such as insurance is. And the reasons of these contracts can be mixed, so that sale and lease, partnership and insurance, can be had at the same time.

From the end of the work, every contract changes rights; but some contracts, where laws allow it, change real rights, while others generate obligations.

From the effect of generating obligations, contracts are unilateral or bilateral (synallagmatic); nude or clothed (with a civil action); some are valid, firm, or infirm in various degree: either null of themselves, or only rescindable;

From form they are consensual, which take the beginning of obliging from the consent of the parties, or real, which take it from the fact or handing over of the thing; solemn or simple, according as the expression of efficacious consent is bound to a certain mode or not; express or tacit, according as consent is expressed by signs applied or by fact;

From appellation, they are named or unnamed;

From subsistence, some are principal, others accessory.

III. Constitution. The elements by which a contract is constituted are some essential, without which it would be null or another contract; natural, which are judged to be present unless they are positively excluded; accidental, which must be positively added in order to be present.

Every contract is made concerning some thing or matter, which is its remote or proximate object, and it requires consent or a conspiring together of the wills of persons who are capable by law. Several, as a third element, add a lawful cause, or proximate motive which, known to each party, enters the contract. The legislator sometimes supplies this.

IV. Proper efficacy. Every contract changes rights, whether real or personal: in which case there arises in either or both contracting parties an obligation of justice, which, unless it has been strictly personal, affects the patrimony, and differs from an obligation of fidelity, light in its genus.

Every contract expresses a voluntary commutation of rights, so that the transfer of rights can be explained by the true and mutual interior and exterior consent of the offerer and the acquirer. By the law of nature alone, consent must be made known to the offerer, but not to the acceptor as such. In a solemn contract, consent must be expressed in a certain form.

A will not to obligate oneself cannot be combined with true consent; but a will not to execute the obligation undertaken can be.

V. Vices. A contract is vitiated by error and fear. 1. Substantial error, which affects the essence of the contract, i. e. its nature, cause, essential object, of itself annuls the contract; accidental error concerning a quality which is required as a condition *sine qua non* operates the same. And error which, from the deceit of the other party, gave cause, that is, occasion, to the contract permits the deceived party to withdraw from the contract. Every error giving cause also permits this, provided the other party is made unharmed. Damages from vincible error will have to be repaired according to the degree of fault.

2. Omitting fear disturbing reason, and fear from within, or from without but just, every other fear obliges its author to repair damages. On account of fear from without and unjust, which is imputable to the other party, the one who has directly suffered fear can at least rescind the contract, provided, comparatively, i. e. with attention to the person fearing, the fear was grave or gave cause to the contract. Several also concede this, whoever was the author of the fear. If the contract is made only indirectly from fear, the contract is not rescindable unless the other party was to be blamed.
3. Deceit by the law of nature effects nothing unless it has produced error. But attention must be given to positive laws.
4. Lesion of itself does not affect a contract, unless from some positive law.

VI. The interpretation of contracts must be made according to equity, so that in doubt the response is rather for the debtor.

VII. Extension and variety of obligation. 1. Of themselves only the contracting parties and those who hold their place are obligated: representatives and successors, unless the obligation has been strictly personal and not real; for a real obligation affects the patrimony. But dominion transferred by contract all must of themselves reverence.

2. An obligation of itself (unless a different mind of the parties is demonstrated) has its origin from the moment of the perfected contract.
3. Subordinated to a condition which is not merely potestative, and which is possible and suspensive, an obligation is suspended; but, when the condition arrives, in some law it is judged to have existed from the moment of the contract. If the condition is possible and resolutory, the obligation holds meanwhile, but, when the condition arrives, it is so extinguished that as to several effects it is judged never to have existed. A purely potestative condition, since it leaves the obligation entirely to the will of the party, effects nothing; a necessary future condition sometimes holds for a day; an impossible condition of itself, if suspensive, weakens the contract; if resolutory, it does not extinguish the contract. A shameful condition is morally impossible. But one must see what laws establish concerning these conditions.
4. A day from which affects not the obligation but the execution: it defers this; it ends the same if it is a day to which, unless it was established for urging the obligation.

He in whose favor the day has been established can renounce the day: it is presumed to be the debtor; but it can be the creditor or each.

5. Mode is a burden or charge imposed upon him who has the right from the contract; its effect must be estimated both from the mind of those agreeing and from the law.
6. The same must be said concerning the express cause for which one contracts.
7. An added demonstration, or more accurate description of the object, can be merely demonstrative, which lacks juridical effect, and taxative: in which case, the falsity having been detected, either the contract falls, or the error must be repaired. Positive laws must be consulted.
8. An added disjunction allows a certain option to be present: whether it permits the debtor to substitute another thing for the thing which alone was promised (facultative obligation), or the stipulation itself has been made disjunctive (alternative obligation). This of itself does not cease unless both objects have perished.

VIII. Confirmation of contracts. The force of agreements is strengthened: a) by a promissory oath, concerning which above; b) by a penal clause, whether for soliciting execution, in which case the penalty is not owed unless it is sought and the debtor is to be blamed; or for estimating damages, in which case it is owed whenever damages would have to be repaired; c) by earnest-money, which can be probatory, confirmatory, which is lost if execution has been lacking, and penitential, which gives place to receding from the contract.

IX. Extinction of obligation. The obligation of a contract is extinguished: a) by payment of the debt; b) by novation, by which an obligation is changed into another; c) by remission of the debt; d) by compensation, which is "the contribution of debt and credit between themselves," and can be legal, facultative, or judicial; e) by confusion, when the one who was creditor becomes the same as debtor, or conversely; f) by loss of the certain thing which is owed; g) by rescission of the contract; h) when a resolutory condition arrives; i) by liberative prescription.

There are also causes, especially damage, which permit delay of execution.

Unforeseen circumstances, by the law of nature, will be able reasonably to hold as tacit conditions, yet in such a way that the other party is not damaged thereby.

Article II: On Individual Contracts

I. The contract of simple promise, which must be distinguished from a simple proposal and from a promise from fidelity, or from an obligation of mere faith concerning a good and possible thing, is a deliberate and spontaneous concession of a right to another accepting, toward some good and existing or possible thing.

Only an obligation of justice is grave: but they estimate grave matter at four times the quantity of theft absolutely grave. Nor is an obligation of justice presumed, but it is demonstrated either by words or by other indications, for example of mutual promise; it has its beginning from the external acceptance of the promisee, unless the promisor, for example on account of the form of letters, is judged to have wished to defer the obligation until acceptance was made known. If the promisor dies before acceptance, positive laws and, from the law of nature, the mind of the promisor, must be attended to.

II. Donation is a gratuitous contract by which one person, the donor, from an intention of liberality, concedes to another, the donee, his own thing as to dominion, without any obligation of restoring. Donation remains true, although it is allective.

It is often a solemn contract, unless donations made by short hand, or covered under the form of an onerous contract, are admitted.

Donation *inter vivos* and donation *mortis causa* are distinguished: the latter is revocable even up to death, and must be accurately distinguished from a donation, even under the condition of death, made by a sick person, or from a donation revocable in a certain case, for example if I recover. For several present-day laws do not admit donation *mortis causa*.

Persons ought to be capable of giving and accepting, whether for themselves or for a person whose goods they administer; and justice forbids a debtor to harm creditors by largess.

Attention must be given to laws which, from the presumed will of the one giving, oblige an heir to bring back received things or capital into the inheritance which he wishes to enter (collation).

III. Commodatum is a contract by which some thing, as to use alone, is gratuitously conceded for a certain time. If the time is not determined, but it must be restored at the will of the lender, it is called precarious. A law which obliges the borrower to make good a fortuitous case will bind conscience after the sentence of the judge.

IV. Mutuum and lending at interest. A mutuum is a real contract by which the dominion of some fungible thing is transferred from the lender to the borrower, with the obligation of restoring the same or a similar thing in species and goodness.

At the end of the mutuum, according as the matter or the price has rather been considered, a quantity of the same measure and quality, or a quantity of the same price, will have to be restored. From positive law, money of itself must be returned in the same numerical quantity in money legally admitted. The obligation of lending, which charity would otherwise impose, is often, but not always, excused by grave inconvenience.

A mutuum is gratuitous by its nature; nor, as such, does it contain a title of gaining. Usury, in the broad sense, is whatever beyond the principal must be paid to the creditor; in the strict sense it is an increase to be paid after individual intervals, especially if it is money. If usuries are sought, there is lending at interest.

It has always been lawful, by a prior agreement, to stipulate compensation of an extrinsic title which is truly present: ceasing gain, emerging damage, danger of the principal, indeed a long time through which the creditor was deprived of his things. But while the present condition of society perseveres, it is never unjust to lend monies under moderate interest, since today the possession itself of money has a value which is compensated by lending at interest. In the usual increase, the ordinary danger of the principal and ceasing gain are computed.

V. Census, in general, is a contract by which someone, the census-holder, acquires the right of receiving from the census-debtor an annual pension from another's thing or even from a person fruitfully working. It is distinguished as perpetual and temporary; of this kind is life-census, which is constituted for the life either of the census-holder or even of another person; redeemable and non-redeemable, according as, after a suitable sum has been paid, the census-debtor can remove the

burden. Moreover it is constituted by gratuitous title or also by onerous title; in which case it becomes an aleatory contract.

VI. Purchase-sale. 1. It is a bilateral contract looking to the transfer of dominion of a thing for a price. Price, however, is called the value of a thing expressed in money. According as, by laws and cases, dominion is perfected by the consent itself or only after legitimate handing over or inscription has been completed, the contract will be consensual or real. This must be observed concerning other similar agreements.

2. In the essence of purchase-sale there is distinguished:

a) Consent, an element common to every contract, which here can be given simply or subordinated to the examination of the thing, or subject to the faculty of redeeming the thing after a certain time. In certain contracts positive laws permit rescission for the seller on account of grave lesion.

b) The thing. This must be handed over at the proper time and, of itself, at the expense of the buyer. - Its substantial faults, which the buyer is clearly ignorant of, must be manifested, and accidental faults concerning which an inquiry is made, and, from positive law, hidden faults which are called redhibitory. - Of itself a true and pure thing must be handed over, although someone can accommodate himself to the received usages of upright persons. - If, on account of a defect of the title transferred by the seller to the buyer, the latter is disturbed or suffers eviction, that eviction must of itself be made good by the seller.

c) A just price must be required and paid. In commutations there is distinguished a legal price which public authority can impose for preventing abuses, especially in necessary things, or on account of another necessity or utility of the common good, so that it must be observed in conscience; and a common price, which is defined by common estimation. That price is accustomed to admit the latitude of highest, middle, and lowest price; wherefore it is perfected by a conventional price, concerning which the parties agree.

The conventional becomes the only price when the legal and common price are lacking, either because there is no common value of the thing, or because both parties, conscious of their ignorance, have wished to enter the risk concerning the true price, or because the party who was unwilling to sell the thing has added to the just price a reasonable price of affection.

Besides causes which change common estimation itself, other special causes permit things to be bought at a cheaper price when they are less useful to the buyer or are bought together in great quantity; while a greater price can be required by the seller either on account of delayed payment, or on account of greater labor, for example of selling in small quantities, or on account of a peculiar privation, about which the buyer is made more certain. The special utility of the buyer does not affect the price of itself; yet it can bring about, if it is fruitful, that the seller, with the price increased, obtains a certain partnership in gain.

Thus far concerning the price of commutation, which is paid for a thing, and must be distinguished from a price which is measured not according to the value of the thing but according to another title, such as sustenance. This price is given on account of or because of something else, yet without comparison between thing and thing. The case is had when a person performs a work socially useful

which by its nature transcends the order of money. Thus the physician who procures health, the advocate and magistrate who procure justice; thus also notaries who add public faith to acts.

Their stipends are designated by the special name of honoraria, and are not to be thrust down to salary without a certain materialistic abuse. Often a legal price is established for these.

d) In selling names of private credit, one must beware lest you require a price for a title which you know to be of no value.

e) Someone can enjoy a legal monopoly so that he may increase the price in a reasonable way; but in private monopolies by various arts, the highest price otherwise just cannot be exceeded.

To monopoly, which we do not think to be natural but opportunely conceded by law, we refer the exclusive right of an author or inventor to care for the publication of a work, the construction of an invented machine, etc.; nevertheless the author has a natural right to reputation concerning his own work.

f) In auction under the spear, which of itself would have to be governed by the rules of an aleatory agreement, various arts, otherwise to be condemned, can be tolerated by custom for obtaining a greater or lesser price. Nevertheless the thing must be handed over to the buyer; the price offered must be paid: the one bidding must have the faculty and will of paying; it is unlawful to turn bidders away by fraud or fear.

Brokers are to observe the laws and usages of upright persons and to be content with a moderate wage.

VII. 1. Exchange is a bilateral contract looking to the transfer of a thing for a thing into dominion. It is consensual, if by mutual promise; real, if it is perfected only by handing over of the thing. Laws must be consulted.

2. Money-changing is an exchange of monies, with some profit for the money-changer. It is distinguished as manual or small, local or trajectitious or by letters, and temporal, if present money is given for another to be paid later in the same or another place. By this reason merchants are accustomed to obtain anticipated payments, with the increase deducted. Moreover any money can be paid which is in fact accustomed to be accepted, but not money properly false, although often damage is not established.

VIII. Lease-hire, which is akin to sale, looks to the utility of a thing or of personal work to be ceded to another for a price, for a certain time. According to the various positive law it can be consensual or real.

Lease of things is distinguished, which, conceding the utility of things, follows the rules of sale, and lease of another's action, which, if it is regarded terminatively, becomes lease of work; but if in itself, is lease of services.

By lease-hire of work, a work to be completed for a certain price is undertaken by him who for that reason is called the hirer of the work. And he ought of himself, within the defined time, to complete the work for the accepted price. Nevertheless extraordinary expenses, and, as it seems, involuntary error of calculation, are to be compensated to him. - By lease-hire of services, the services themselves are leased to the hirer, who, as the minimum just price, ought of himself to pay the workman what,

not hired, he would commonly gain for himself. But Providence has so ordered things that, in a time not calamitous, a strong workman, by his own work, could contribute to an ordinary family, i. e. such as would commonly exist by observing the moral laws, whence, with at least a reasonable supplement from the wife and older children and from thrift added, it would be decently supported. Therefore this wage, excepting the particular causes already noted in the contract of sale, will have to be paid as minimum, we do not say as already fully just.

Supplementary monies for those who must support numerous offspring are not owed of themselves from commutative justice. But the social necessity of protecting fathers of families can bring it about that public authority creates a true title of justice for exacting them.

All special burdens imposed on workmen must be compensated by a corresponding increase of recompense.

Today, however, the reason of some partnership is often mixed with lease-hire either of things or of services. This, in the contract of lease of services, is greatly to be desired and commended.

IX. Partnership is a contract looking to communion of a thing or work, and communion of use or especially of gain perceived from it. It is distinguished, from scope, as universal or particular; from end, as mercantile, directed to acts of business, or civil, directed to another economic utility. What is joined together for an end of a superior order often assumes another name, for example association. - The equality of justice here is defined by geometric proportion between contributions and profits. Moreover a leonine partnership is unjust and of itself null.

X. 1. Mandate is a consensual contract by which something to be done is committed to another who undertakes it. It is of itself gratuitous, and can always be revoked.

Procuration, even without a contract, gives to another the faculty of doing something for another.

Mandate neither includes nor excludes a wage on account of work to be performed.

2. Management of affairs is, as it were, a presumed mandate, for doing useful work for another who is absent or impeded. By the law of nature the owner of the affair managed ought to compensate at least necessary or useful expenses. Positive laws must besides be consulted.

Ratification, by which someone approves what another has done for him, is equivalent to mandate.

XI. Deposit and sequestration. Deposit is a real contract by which something to be kept is handed over, so that it may be returned whole. It is called irregular if the depositary can consume the thing. A deposit which from circumstance the owner is compelled to make is called miserable. For this deposit, as for the deposits of travelers with innkeepers, the burden of proof is lightened. The depositary ought to abstain from illicit use of the thing deposited.

Sequestration is the deposit of a litigious thing with a custodian who is called a sequestrator. - The burden of keeping a deposit can be compensated by money.

XII. Insurance is an aleatory contract by which someone, for a certain price, obliges himself to make good to another certain fortuitous cases or cases of prevailing force.

Life insurance obliges the insurer to give, for some annual payments, a determined sum, if a definite person dies or reaches such an age, or even in either case.

In these agreements also justice requires an uncertain event, or certainly one unknown to the parties, and a just price; and one must beware of various frauds. Which are unjust must be gathered from the clauses of the contract and received usages.

On account of the multitude and uncertain person of those who have suffered damage, there is one who thinks that in general what must be paid for damage inflicted on the insuring society can be given to the poor. The Sacred Penitentiary, however, opposes this opinion.

XIII. 1. Wagering is a contract by which two or more, contending among themselves about the truth or event of some matter, mutually promise something to one another so that it may become his who has attained the truth. Justice of itself requires a doubtful event and an equal opportunity of conjecture, or compensation for inequality.

2. Game is a contract by which players agree among themselves that what has been deposited in the middle shall yield to the winner. It is distinguished as aleatory, industrious, mixed. Justice requires that it be entered into freely, that equality be preserved, and that unlawful frauds be absent.

Easily, when great sums are exposed, this contract, of itself lawful, is corrupted by various vices. Open prodigality of the one exposing probably makes the game null; certainly the game of those who are unwilling to obligate themselves, or who do not have whence to pay the money, is null. Civil laws must also be attended to.

Fictitious sales and purchases in Bourses are numbered among games.

Moreover, a Bourse is a market where goods are present only by samples or by titles.

A Bourse of goods and a Bourse of securities are distinguished. Besides true business dealings, several others are at least mixed with game. Especially to be attended to are markets for a day, whether simple or under penitential earnest-money, which are called premiums (*primes*); and accessory contracts of sale-back, etc. To these are to be applied the norms concerning monopoly, concerning sale-back, concerning wagering and game.

XIV. 1. Transaction is a contract by which, by a mutual but onerous renunciation of the parties, a controversy concerning a doubtful right is ended. It supposes a doubtful right; and from the probability which the right had at the moment of agreement, the price must be estimated.

Contrary to an amicable composition, it carries with itself of itself no gratuitous cession of right; yet by accident it is often mixed with condonation. He alone can transact who is permitted to alienate the thing.

2. Compromise is an agreement by which, for preventing or ending a lawsuit, the parties commit the controversy to be settled to the judgment of one or more persons who are called arbiters or arbitrators.

3. To compositions must be ascribed agreements by which a debtor burdened with debt cedes his goods to creditors in order to avoid judicial pursuit, or by which a merchant, with partial payment promised, impedes bankruptcy or puts an end to it. These agreements of merchants are called concordats, and sometimes by the authority of a judge they are imposed at least on

the lesser part of creditors. Ought the debtor, who afterwards enjoys prosperous affairs, to supply the remainder? This must be gathered from laws, from received morals. Of itself condonation is not presumed but must be demonstrated.

XV. Secondary contracts are pledge, hypothec, concerning which above, and suretyship, by which someone, in the place of the principal debtor, undertakes to fulfill an obligation which the latter does not fulfill. The surety is held by no greater obligation than the principal debtor. Remission made to the principal debtor frees the surety, but not conversely.

Chapter VII: On Offices

I. General Matters

Notion and Division of Offices. 1. By a general and rather confused notion, any office designates certain parts to be carried out for the utility of others. These parts can be undertaken accidentally or permanently: office is more properly understood concerning parts stably undertaken; they can be of private character, which are undertaken and abandoned by those willing, as if someone offers himself for curing diseases, and be entrusted by public authority; i. e. there are private and public offices.

2. On public offices. In order that a perfect society may attain its end, the Church and the various states have many things to be done, both for their own immediate good and for the good of the citizens of whom they consist. To perform these things well society at once inviolably (or by right) can and ought. But a moral person, of itself altogether powerless, is compelled to do all things through legitimately deputed physical persons. Thus it happens that the immense province by which the Church and states are administered is divided into many partial procurations or ministries, to which rights and duties are attached. These are public offices. Therefore a public office expresses a certain sum of rights and duties committed to a physical person for exercising some part of public action; and it can be defined briefly: public procuration or administration.

The conferral of these offices, or the deputation of a physical person to exercise an office, can be made in various ways, concerning which there is not to be treated in this place. We know that, in the Church, the first deputation was made authoritatively by Christ, and then, from the power communicated through Christ to Peter and the Apostles, the erection and conferral of offices was ordered; while, in the state, the first possession of supreme jurisdiction has a much less definite origin. For our purpose it will be enough to have noted this: that public offices are for the most part undertaken voluntarily, and only when affairs are desperate are they committed to be carried out by the unwilling. Yet the faculty of enjoining the very undertaking of an office cannot be denied to the supreme public power; and by canon 128 itself there is sanctioned the obligation by which clerics are held to undertake and faithfully carry out the office which, in the necessity of the Church, the bishop has imposed on them.

II. Obligation. The general office of managing an office well follows the very undertaking of the office. When there is question of a private office, this obligation of justice is easily explained by an express or tacit contract. But from the very nature of the matter, he who undertakes a public office to be managed is held by justice toward society. For society has a strict right that it be well administered. To this right there corresponds an obligation of justice which has its seat in the deputed official: for no other seat can be thought up. When an office is undertaken voluntarily, there is added the character of a contract with the Superior who conferred the office.

Moreover, however, there is commonly affirmed an obligation of commutative justice also toward individual citizens to whom the proper action of the office is destined. Thus citizens can demand

from justice that magistrates be willing to judge their causes. What proximate source shall we assign to that debt of justice?

Since no agreement has intervened between magistrates and individual citizens, the proximate source is the law itself, which imposed that office to be exercised from justice toward individuals.

III. Certain Sins to Be Avoided in the Undertaking, Exercise, and Resignation of Office.

1. He who does not know himself to be capable cannot, without injustice, undertake an office, whether private or public. He is a harmful deceiver who, without sufficient expertise, offers himself for exercising an art. Therefore parents sin who, with all consideration of capacity neglected, destine for a public office a son whom they have found less fit for private affairs; those sin who, though unskilled, have sought popular votes. Yet here account must be taken of the greater faculty which the people possesses of electing deputies acceptable to itself. He who has known how to catch the popular breeze, provided that afterwards, in exercising the office, he can and wishes to conduct himself according to the counsels of prudent men, can even do something useful for society, if by his election he has impeded the election of a worse person. All things at last fall back here: that nothing harmful to the republic be done, and that its utility be sufficiently provided for.

You should also observe that the notion of capacity is relative, so that here he must be judged most skilled who elsewhere would have to be rejected as unfit.

But what remains to be done by him who, not being suitable, has been affected with an honor? If he can, he ought to render himself capable, and meanwhile, with the help of advisers, perform his offices well; otherwise he ought to lay down the office.

2. An office once undertaken cannot be neglected without injustice, but it must be fulfilled with that diligence which the common or private good requires and which was expressly or tacitly promised. In vain you will allege private inconveniences. For not only, if there is question of a public office, must public utility be placed before private utility, but also by a tacit promise in the undertaking of the office the one managing the office is held to suffer all inconveniences, to enter into all dangers which are of themselves connected with the office.

These things hold also concerning the lowest administrators. Contrary to what is often thought, greater diligence is owed to public persons, such as the Church and the state, than to private persons.

3. To those who have long and well conducted themselves or have become incapable by sickness, pensions are customarily offered from the public treasury or from a constituted pension fund. Justice forbids that, by feigning sickness or incapacity for the matter, someone should obtain for himself a pension of this kind.

But today the minds of many must be healed from that harmful error by which public utility is made almost of no value, so that even public officials, especially civil ones, do not know how to serve the community itself, and, without scruple, squander public monies, while they carry moderate solicitude concerning true public utility.

II. On the Judge

I. Notions. 1. On the order of judgments. a) In canon law, although by force of c. 1573 every Bishop ought to constitute an official with ordinary power of judging, nevertheless the same person of the Bishop is legislator, judge, and administrator; while today, in temporal society, a perfect distinction flourishes between legislative, administrative, and judicial power. b) Both in the canonical and civil forum, there are distinguished civil causes, in which a lawsuit arisen between parties is extinguished by a definition of right, while no penalty is established, and criminal causes, in which coercion of delicts for the common good is principally intended through fitting penalties; principally, I say, because, both in the canonical and civil forum, in a criminal cause it is lawful accessorily to move a private complaint, for example to obtain repair of damages.

c) In the canonical forum, the tribunal of first instance for causes of seculars and non-exempt religious, and also for controversies between seculars and regulars or between regulars of different religions, is the Bishop, from whom appeal is made to the tribunal of the Metropolitan. But if the Metropolitan himself was judge of first instance, the tribunal of a suffragan Bishop, once chosen with the approval of the Holy See, is the court of appeal for him. The third grade of jurisdiction, which, with the Supreme Pontiff permitting, can also be the first, is the Roman Rota. But since there are twelve auditors of the Rota, who judge by a turn of three auditors, appeal from a sentence of the Rota is devolved to another turn of the Rota. Over all tribunals in some way presides the Supreme Tribunal of the Apostolic Signatura, consisting of some Cardinals, which judges concerning a complaint of nullity against a rotal sentence, concerning conflict of competence between inferior tribunals, etc. (cf. c. 1603, 1604). When the nullity of a sentence has been declared, or restitution has been conceded, or recourse admitted, it remits the cause to the Sacred Rota, unless the Most Holy otherwise provides (c. 1604).

In the civil forum there is distinguished, for lesser controversies and delicts, the conciliating judge (*pretore, juge de paix*); then, for civil causes, the ordinary tribunal, which among us is called of first instance, which at the same time is the tribunal of appeal from the sentences of the conciliating judge. Often special tribunals exist, such as the tribunal of commerce for controversies among merchants, of upright men (*prud'hommes*) for controversies between masters of works and workmen, of guardianships, which in some regions supplies the family council. From the tribunal appeal is given to the Court of Appeal. By a like reason a double grade is had in causes of delicts. But here, for graver delicts, and also, not rarely, for delicts of the political order and of the press, there is customarily an assize court in which citizens, designated by lot among the foremost, with oath omitted (whence they are called jurors), answer affirmatively or negatively to questions posed by the magistrates who are present at the same time, and thus judge the accused guilty or innocent. Having heard these responses, the magistrates who compose the assize court establish the penalty according to law, if the accused has been judged guilty, and pronounce the sentence. If, however, some part of the votes dissents from the other, the magistrates themselves ought to declare what they think concerning the accused, and join their vote with either part.

Above the tribunals and Courts of Appeal or of assizes there exists a Court (one or multiple) of Cassation, which judges concerning defects of form and concerning a violated law of judgments; but it is not accustomed to examine the intrinsic merit of the cause, but remits it to a different court to be judged.

In Roman law the magistrate (praetor) spoke the law and wrote the formula according to which the judge, after examination of the fact, had to give sentence, whence procedure was distinguished *in iure* and *in iudicio*. If you except what we just said concerning the Supreme Tribunal of the Signatura and concerning the Court of Cassation, in both canonical and civil forum the same judge pronounces concerning fact and concerning law.

In the canonical forum, besides the judge or judges (if the tribunal is collegial), auditors can be designated, who, abstaining from sentence, cite and hear witnesses, and instruct judicial acts; an actuary ought to be present to draw up the acts or at least to subscribe them. There is also a promoter of justice, to whom now the criminal action or accusation is reserved (c. 1934), and who also, in contentious causes, where the public good requires it, carries a part; and the defender of the bond, for protecting the bond of sacred ordination or marriage.

In the civil forum there are distinguished judges properly so called, who, sitting, bring sentence, and officials (the royal or republican procurator or his substitute, or the advocate general or procurator general) who, standing, in certain civil causes express what they think, or in criminal causes carry the parts of accuser.

But, while in the canonical forum the beginning of action and inquiry also pertains to the judge, in the civil forum the judge cannot legitimately bring sentence unless asked, either by the parties in a civil matter, or by the public procurator in a criminal matter.

In the canonical forum, parties can act by themselves or choose for themselves a procurator (*avoué*) by whom they are represented, and an advocate by whom they are defended. This latter, moreover, is given from office in criminal causes. In the civil forum, when the cause is not criminal, sometimes the parties cannot appear by themselves but must choose some procurator.

In the canonical forum, the defense must be made in writings; "nevertheless a moderate disputation before the judge sitting for the tribunal is admitted for illustrating something, if, either party or both parties requesting it, the judge judges it useful and admits it." Cf. c. 1863 and 1866, § 2. On the contrary, in the civil forum, the defense is made orally and causes are of themselves conducted publicly.

In both forums, canonical and civil, there are declaratory sentences and decisory or decretory sentences. A declaratory sentence authentically promulgates either the nullity of a juridical act or (this in the canonical forum alone) a contracted penalty; a decisory or decretory sentence, as a particular law, contains the proximate title by which the right of the parties is constituted or the penalty is to be sustained by the accused. And, while the cause is deliberated, the judge issues several mandates and orders as a true Superior.

II. The requisites for a legitimate judgment are these three: jurisdiction, right process, and right intention. It is necessary that the cause be duly introduced and ended. In the present-day civil forum, the judge must always observe the solemnities required by law, nor is he accustomed to have the faculty of bringing an arbitrary penalty, but only within certain limits, according to the variety of cases, can he increase or diminish the penalty. He enjoys an unequal power of composing controversies in various laws.

Defect of right intention is opposed to charity but not to justice.

A secular judge does not have jurisdiction over ecclesiastical persons or causes; for settling these he can validly be delegated by the Supreme Pontiff alone.

Wherefore he who uses lay jurisdiction against ecclesiastical persons or in ecclesiastical causes violates justice toward ecclesiastical society and toward the person whom he compels without right; he sins besides against religion, from whose motive the privilege of forum was introduced. This is of itself grave. Yet derogation from this privilege is made through Concordats and also through custom, at least centenary; which custom the Secretariat of State, in the year 1911, recognized for Belgium, Germany, and Holland (cf. *Per.* VI, 190).

By this recognition, which seems to savor of some toleration rather than a formal abdication of right, sacrilege and injury toward ecclesiastical society seem to be removed. But has penal jurisdiction over ecclesiastical persons also therefore been conceded; has a lay magistrate been made truly competent in a criminal matter? We doubt it. Wherefore, at least where a graver cause is being conducted and an express concordat or indult is lacking, we judge it should be advised that the formal faculty, concerning which c. 120, § 2, if it can be done, be sought where the privileged forum has merely become obsolete. And also by persons who draw priests and prelates before a lay judge, the natural law must be attended to, which commands that we show due observance to Superiors and avoid scandal.

Penalties of One Violating the Privileged Forum. From c. 120, Cardinals, Legates of the Apostolic See, higher Officials of the Roman Curia on account of business pertaining to their office, or one's proper Ordinary cannot be brought before a lay judge without permission of the Apostolic See; and he who has dared to draw a person of this kind without such permission to a lay judge contracts by the fact itself an excommunication reserved to the Apostolic See in a special manner (c. 2341); the rest who enjoy privilege of forum cannot be brought before a court without permission of the Ordinary of the place in which the cause is conducted; which license, however, the Ordinary, especially if the plaintiff is a layman, is not to deny without a just and grave cause, especially when he has in vain given labor to composing the controversy between the parties (c. 120, § 2); and he who has dared to draw another Bishop, even merely titular, or an Abbot or Prelate *nullius*, or someone from the supreme Superiors of religions of pontifical right, before a lay judge, contracts by the fact itself an excommunication *latae sententiae* simply reserved to the Apostolic See; finally, if he has dared without license to bring before a layman another person enjoying the privilege, a cleric indeed incurs by the fact itself suspension from office reserved to the Ordinary; but a layman is to be punished by his own Ordinary with suitable penalties according to the gravity of the fault (c. 2341). But, because daring is required, no one contracts the penalty who, compelled by office, draws a privileged person to a lay judge; and, by the very text of the canon, judges are excluded from this delict, since they draw no one to their tribunal. Cf. *Epitome*, III, n. 540.

III. Obligations of the Public Procurator. Besides competent knowledge: 1. he ought to guard the reputation of citizens. Wherefore, unless indications have preceded which suffice according to laws and received customs, he cannot inquire specially concerning some person whether he has committed some crime. Nor in canon law can he be cited as accused unless he is one against whom half-proof has existed; 2. since he is a promoter of justice and not of condemnation, he ought to speak sentence according to the merit of the cause, nor, by a prejudged reason, urge condemnation beyond what the proofs permit; 3. he ought to strive that causes, especially criminal ones, be judged

quickly, and that citizens perhaps innocent not be detained too long in preventive prison. (Concerning that infamy to be avoided, cf. Ball.-Palm., *Op. theol.* IV, 559.)

IV. Obligations of the Instructing Judge. 1. He himself ought to be diligent in examining causes; and because public knowledge must be acquired, and by that reason which is expedient for the common good, the judge can employ only those means of investigation which are approved by usage, and do not furnish occasion for many abuses, or which are not repugnant to the judge's own dignity. A confession extorted by unjust means the judge cannot use for condemning the accused. And the same seems to have to be said if he has known the fault by unjust interrogations whose injustice the accused did not know. (Cf. Palm., *Opusc. Theol.* IV, 556, who thinks this more probable.) But if, by unjust interrogations, the fault of another has been detected, since the action was not unjust to the other, that fault can be publicly vindicated, i. e. judicially punished.

2. Among means plainly foreign to the character of present-day criminal process, the use of hypnotism seems to have to be placed. For it approaches a certain kind of torture, since it extorts the confession of a delict by insuperable force; and this not without harm to a perhaps innocent subject and diminution of his liberty for the future. Wherefore, unless perhaps a special necessity of averting a public evil should require it, we judge it unlawful to employ means of this kind. But it is clear that a confession made in that sleep can never be held as a certain argument, but indications thus given must be proved by ordinary means.

V. Obligations of the Judge of the Cause. 1. In examining and dispatching causes he ought to employ the usual diligence of a prudent judge. "For from office he is held to render to each his own: which he does not do if he defers sentence without a just cause." (Busembaum, *De iudice*.) He is held to refund to the injured party damages and expenses proceeding from gravely culpable negligence.

2. In criminal causes this holds: "the delict not being proved, the accused is absolved." And because the judge puts on a public person, the delict ought to be established for him from public knowledge. Public knowledge, however, is that which is gathered according to the acts in the trial. - If by private knowledge he has known an innocent man who nevertheless is publicly convicted, he ought to free the accused in every way, if he can, for example by offering himself as a witness and withdrawing from the cause as judge. If he can do nothing, some, with St. Thomas, think that here also merely public knowledge must be attended to. Others simply deny this, since it is the right of the innocent person not to be condemned. More rightly, with Lugo, *Iust.* d. 37, n. 41 ff., you will distinguish greater criminal causes and lesser causes in which there is question only of monetary penalties. For over these goods the public power has eminent dominion by force of which, on account of a proportionate public cause, it can take them away from citizens. But it is of public interest that the order of judgments be preserved, since violation of it easily becomes scandalous. Then therefore the opinion of St. Thomas seems to have place, but not when the penalty of death or the like would have to be pronounced.

3. In a civil cause, doubts of fact are solved for the accused. For this is perpetual: the proof lies upon him who affirms, not upon him who denies. This reason is already enough for preferring the possessor, insofar as he merely repels the action of the other.

But what concerning a doubt of law?

With the rules of the older authors omitted, the civil judge should answer according to the opinion which, after study has been made, is more approved by him, unless he prefers to follow the opinion received in the tribunal of appeal, lest his own be reformed. For he can defer much to its authority.

This is the mind of our laws and the common reason by which the office of judge is understood. For a judge is not merely a private doctor, but by his authentic definition removes the doubt in a particular case. But since, in giving his solution, he ought to be solicitous concerning truth alone, he surely will have sinned if he has adjudged the matter to him whom the lesser probability favors. Lugo, *Iust*. d. 37, n. 117, excepts if the common good, for example of avoiding scandal, because by accident the choice of the more probable opinion would bring great public detriments, demands that sentence be brought for the less probable opinion; or if the cause is one which, from positive law, is to be favored in doubt.

Nor does justice stand in the way that, according as he can, he concede something to the lesser probability. In a morally equal doubt, others say that the thing is to be divided, if the judge can do this. (For example, in the U.S.A. this would be forbidden; he would rather have to leave the thing in its own state.) Nor do they condemn those who adjudge the thing to either party. But he should always be mindful of rule 11 of Law in 6°: "the accused is to be favored rather than the plaintiff." Concerning the cooperation of a judge with an unjust law, we treated above, n. 140.

Can a judge suggest to the other party what it could allege for itself?.

St. Alphonsus (L. 1, n. 210) reproves this, because he cannot act as an advocate. Reuter, *Neo-confessarius*, III, 465, judges that of itself it is lawful, and after him Lehmkuhl, I, 960, 5.

Indeed he says it must be done from charity, "if there is question of grave public damage, or danger of a soul, or the harming of a pious cause." But let the judge beware lest he seem to be carried away by zeal for parties, which would be scandalous. Nor do we think this lawful where there is question of means of law which cannot be supplied from office, but are valid only if they are appealed to by the litigant: thus prescription.

Moreover, juridical arguments the judge can and ought to allege in giving sentence.

What is lawful for a judge concerning gifts?.

With the law of nature considered, he can accept little gifts spontaneously offered, but not, before sentence, those which create danger of perverting judgment. Yet of those things which he has accepted he acquires dominion. - He ought to restore those things by which he obligated himself to doing that to which he is held from justice, for example to bringing a just sentence. But those things which compensate an honest and undue performance, for example extraordinary diligence, he by no means ought to return. Finally, before the iniquity has been committed, but not afterwards, he ought to return the price of iniquity. Cf. the things said concerning an illicit cause n. 412.

What therefore if, when the option is permitted to him, he has accepted a price so that he might examine some cause first? Laymann, L. 3, s. 5, tr. 4, c. 1, n. 9, does not dare to condemn this, while on the contrary Lugo, *Iust*. d. 37, n. 136, with St. Alphonsus approving, L. 1, n. 196, and Lehmkuhl, I, 969, think that it is not lawful to accept anything for the choice of some party whenever from justice

you are held to do either gratis, nor is any labor added: for you perform nothing onerous which would be compensated by a price.

But every acceptance of gifts detracts not a little from the reputation of magistrates and from the honor of justice. Wherefore laws are entirely to be approved which gravely punish judges who have accepted such things. Every acceptance of gifts is prohibited by canon 1624 and 1911, § 2, both to judges and to the inquisitor; in causes of Beatification, moreover, they ought to emit an oath concerning gifts not to be accepted. Modest edible things, which before the Code, when offered liberally, were tolerated, do not seem to be contained in that prohibition.

VI. Effect of an Unjust Sentence. In a doubtful case the presumption favors the sentence. But where it is certainly unjust, it does not oblige conscience, although sometimes, in the external forum, it ought to be observed for avoiding scandals. The very party which has triumphed, when the error is known, ought to yield to the other and according to general rules restore what has been accepted. If the judge is to be blamed, he ought to repair damages. But unless there is question of laws which impose a compensatory fine of taxes, he will have to restore nothing on account of a fine not sought, because the end of penalties is not that the treasury be enriched.

III. On Jurors

I. Concerning Necessary Knowledge,. it is asked whether a juror lawfully performs an office which, without sufficient expertise, he often will have to exercise.

Resp. The question of fact alone is to be solved by jurors. The danger of error indeed is not to be denied, but it is not greatly to be feared lest an innocent citizen appear convicted, since the cleverness and arts of advocates bring it about that often the truly guilty man is absolved. But the legislator himself may ascribe to himself the detriment of the common good which is received from the absolution of the guilty. Therefore a juror seems immune from fault who firmly determines to condemn him alone whom he judges manifest of a true crime. There is added that, with this disposition of mind, he will act better than, according to the things which generally happen, he who would be substituted for him, so that he can judge himself at least relatively capable, which is enough.

II. On the Use of Private Knowledge. 1. Not even a juror can condemn him whom he has known to be innocent. For the arguments brought will never give him the intimate persuasion which, according to law, is necessary that he pronounce the accused guilty.

2. Nor, as it seems to us, can he condemn him whom he has known to be guilty by private knowledge alone. For the very order of justice requires that, for condemning a citizen, public knowledge be had.

Nor does positive law which some allege, for example concerning the law of Belgium, seem to us to have this sense. Yet there are those, as Ill. Waffelaert, *Ius* II, p. 433, who think that the use of private knowledge can be permitted by law. We will be able to concede this if it is specially of interest to the republic that the crime be punished. Cf. Genicot, II, 9.

What if the accused was a cleric, we have seen above, n. 142.

III. It happens today that jurors are scandalously lacking in their office, when, on account of reasons wholly extrinsic to the cause, such as political passion, or appetite for vengeance, or antisocial errors, they deny that manifest crimes have been committed.

IV. On Arbiters

Notion and Office. 1. Arbiters are persons, of themselves private, whom, by an agreement which is called compromise, the parties have voluntarily chosen to settle a lawsuit.

Of themselves they ought to bring sentence according to law, unless from the compromise they have had the faculty of compensating the matter according to equitable and good.

The parties ought to stand by the agreement. Moreover, with certain conditions observed, the sentence of arbiters obtains the force of a thing judged.

2. For certain questions of fact to be solved, the judges themselves are accustomed to designate arbiters (skilled persons, experts). They should then take care that they diligently fulfill their office, and not allow themselves to be drawn, to the detriment either of the treasury or of the private party, into deceitful conclusions.

V. On Advocates or Patrons of Causes

I. Parts of the Office. This general rule can be handed down: for an advocate those things and only those things are lawful which are lawful for him whom he patronizes. For he undertakes to defend his cause.

2. He is forbidden under grave sin to undertake a cause which he knows to be unjust. But among civil causes which are probable and doubtful on both sides, he can defend either one, even the less probable, provided the client is warned concerning the lesser probability, and provided there is some hope of victory. For each party has the right of bringing forward his reasons in court; nor is that always truer which is more probable. But if there is no hope of victory, the matter would end in a useless vexation of the other party. Make exception, however, if there is a just and proportionately grave reason for prosecuting the suit: for example, if only from prejudices or from the dishonesty of the judges the cause has become desperate. In a criminal cause, he can defend even a guilty accused man, so that he may escape death or another penalty. For the accused is not bound to admit a penalty unless juridically convicted; therefore he can, by himself or through another, overthrow the proofs until he is convicted. But to impede public vindications by right and wrong means, and by abusing the ignorance or passions of jurors, can be opposed even gravely to various virtues; and it socially offends due piety and charity toward the fatherland.

Even in a just cause he cannot employ illicit means, such as false witnesses, spurious documents. Yet if the cause is manifestly just, this will not be opposed to commutative justice.

3. If in the progress of the cause he recognizes its iniquity, he ought at once to warn the client and persuade him to desist. For since he has been hired for a fee, justice itself obliges him to this warning insofar as this care was tacitly promised: this will have to be gathered from customs and from the honesty of the client. Nor can he persuade a composition by which

something is remitted from right, because composition has no place except when the matter is doubtful. Yet he does injury to no one if he induces him to a transaction without damage, deception, force, and fear, or to redeem by composition the unjust obstinate vexation of the other party. Even of an unjust cause which he deserts he ought to keep the secrets. Make exception if revelation were the only means of averting a gravest damage from an innocent person. But even then, on account of the prohibition of positive law or the greatest inconveniences, for the most part he will not be held to make that revelation. Cf. the things to be said concerning secrecy in the treatise on truth.

4. An advocate in an unjust cause ought to repair to the contrary party all damages following from the unjust action; and indeed as principal cause, if he has concealed the injustice from his own party; of himself as secondary cause, if the injustice of the cause was clear to the client. Then toward his own client he of himself is held to nothing. The client, from a just cause, for example by friendly composition, can desert the lawsuit; in which case it is enough that he furnish the equitable price of the labor done. But if without a just cause he renounces the suit, and the fee was fixed from the beginning, not a few, with St. Alphonsus himself, L. 4, n. 225, permit that he exact this whole fee. Why, however, unlike another hired laborer, he could exact more than emergent damage and ceasing gain, we confess this escapes us.

II. On the Patronage of the Poor. The law of charity obliges an advocate to give patronage gratis to a poor man in grave necessity, yet without notable inconvenience to himself; in extreme necessity, he would have to patronize the poor man even with grave inconvenience to himself. Generally, however, today, since those who are to defend the cause gratis, *pro Deo*, as they say, are designated from office, that obligation is lightened for him. But a cause of the poor committed to him cannot be neglected, with justice preserved. For it is part of the office undertaken, and by social authority it is imposed as some office. Yet even in favor of the poor no one ought or can undertake a cause against the obligation of his conscience. It happens, however, that from lamentable ignorance Catholic advocates undertake causes, for example of civil divorce, with an equal mind, as if they could defend all almost indiscriminately. Hence refusal of causes of this kind becomes inconvenient for younger advocates, who must be employed in the office of gratuitous consultations. It is necessary that upright men, instructed, be able themselves to enjoy liberty of conscience. What is to be said concerning the cooperation of advocates we saw in the work *On Chastity*, 132, 287. This is the summary. Grave causes on account of which it is lawful to seek perfect civil divorce are to be approved by ecclesiastical authority; those causes, however, which the client is permitted to conduct, those same causes, and no others, advocates can undertake.

Today not rarely syndicates have hired advocates who must assist members with counsels. Although they have not contracted with individuals, the agreement seems to have been made in such a way that toward individuals they ought from justice to employ the promised diligence. Under this aspect they have an office, and find a place in this chapter.

VI. On Other Ministers of Justice

Several other officials have a part in administering justice. Others, the more important, are the reporter or relator, who from office summarily exhibits to the judges the true state of the question, as, for example, in criminal matters, the instructing judge; the secretary or actuary, who notes the

acts in writing. Others, inferior, are apparitors (*uscieri, huissiers*), public guards (*gendarmi*). To this their various obligations return: that, being sufficiently skilled, they execute the office with due diligence; that they preserve fidelity toward clients and therefore not open their secrets; that they consult their utility; that they not cooperate in illicit acts, according to the things said in the chapter on cooperation; that they not demand a stipend beyond the just price which is fixed by law or approved custom.

It is asked whether apparitors can ask a whole salary for individual summonses (*exploits*) or acts, when they carry several on the same occasion. The matter is to be judged from received usage and the practice of those who fear God. From the law of nature this can be permitted, since the price is not a mere compensation for the inconvenience of the journey. But positive law, received by usage, can stand in the way.

Can they execute an unjust sentence?.

Unless that injustice is manifest, the ministers do not sin by executing it. For the common good itself demands that they not discuss the sentence of a Superior (2, 2, q. 61, art. 6, ad 3).

If it was manifestly unjust, of themselves they cannot execute it. Wherefore they cannot inflict that evil with which even to cooperate materially is always illicit: such as killing, mutilation. For evils to be inflicted in goods, the rules concerning cooperation are to be applied. D'Annibale, II, 592, judges this to be lawful "because the damage of the republic and the damage of those themselves who otherwise would be removed from office prevails." There is not one opinion of the doctors. Cf. the things said, n. 141.

VII. On Notaries

I. Notion. Under the name of notary comes an official who writes authentic acts for the parties and attributes to them a certain date.

II. Obligations. He ought to be skilled and assiduous in dealing both with civil and with fiscal laws, because by prudent counsel he can avoid for the parties not only causes of nullity and litigation, but also not moderate expenses. Wherefore he ought to warn the parties concerning suitable clauses which are to be inserted into acts, and concerning the mode by which superfluous expenses may be prevented. In dispatching affairs he ought to be diligent, and not by his delay increase expenses; and in affairs to be conducted he ought to look out for the utility of the parties by whom he is consulted.

Since he is not instituted to defend the interests of the treasury, of himself in the instruments which he writes he can admit those things which are lawful for the client in defrauding taxes. But let him beware lest he rashly offer himself into danger of having to undergo a grave penalty.

VIII. On the Accuser

I. Notion. Formerly an accuser was a private person who, on account of the good of public vindication, accused another before the judge of a crime, after undertaking the burden of proving the crime. If proof was lacking, the accuser himself had to pay the penalty. Almost everywhere, in civil law, and now also in canon law, judicial accusation having been suppressed, private persons sometimes must perform only the office of denouncing. The general rules concerning denunciation were handed down in n. 117. Here certain things seem to have to be added concerning the obligation

alone of judicial denunciation. The obligation can flow from a threefold source: from the law of nature, from an undertaken office, and from the precept or law of the Superior.

a) From the law of nature judicial denunciation is to be made when it is the sole and probably apt means of impeding public damage or great damage of a neighbor. Cf. Lugo, *Iust*. d. 38, n. 14. This will be the case of a pending crime, or one which is prudently judged will be repeated. The greater the damage feared, the more certain and imminent it is, the greater the hope of impeding it, the graver becomes the obligation, which is of charity, and, when public damage is at issue, is urged more gravely by legal justice.

From this obligation one's own grave and proportionate inconvenience excuses, also equal damage of the denounced person, if it is done to avert the damage of a neighbor, unless piety besides drives you to consult more for a neighbor who is closely joined with you.

b) From an undertaken office, these ought to denounce harmful persons: fiscal promoters, public and also private guards, insofar as this pertains to the office to be fulfilled.

For all who have been set over persons or things to be guarded ought, both by their own vigilance and by judicial denunciation, to protect persons and things, even with danger and inconvenience promised in undertaking the office, from injuries according to the reasonable will of the masters. Wherefore sometimes, from the highest rigor, without the oath being injured, guards can turn aside. This holds also concerning those who have been set over the exaction of tolls. Cf. Lehmk., I, 987. They are held from commutative justice, so that they ought to repair damages flowing from neglected office; nevertheless they probably are not held to repay fines lost.

c) From the precept or law of a Superior. From the new Code, an express obligation of denouncing is not imposed except of denouncing clerics or religious who have given their name to the Masonic sect and similar associations (c. 2336, § 2) and soliciting confessors (c. 904 and 2368, § 2). The principle of the obligation is expressed in c. 1935, § 2.

From this obligation there excuses: a) perfect amendment of the delinquent, if satisfaction has been made to the injured party and no danger threatens others (but cf. the things said concerning denouncing a soliciting confessor); b) a secret committed from office, unless from the persevering malice of someone grave damage of an innocent person arises, or religion or the fatherland is gravely interested that it be revealed (cf. Lugo, *Iust*. d. 38, n. 37); c) if from this grave danger of honor, life, or your goods threatens. Wherefore you are not held to denounce yourself, nor, of itself, the associates of the crime when thus you would equivalently denounce yourself.

N.B. Concerning the witness and the accused, cf. the Treatise on Truth.

IX. On Physicians and Surgeons

I. Offices. 1. From contract, physicians and surgeons ought to help the sick man in the best way they can.

Wherefore they ought to administer the safer remedy which is at hand. Yet with the health of the sick man desperate, they can try a remedy of ambiguous outcome, which perhaps will be useful, perhaps will hasten death, provided the sick man has consented to it explicitly or implicitly, and has been made more certain of the matter, so that he can provide for himself, unless he has already provided

for his conscience and his affairs. But if no hope of prudence of this kind is present, that warning does not seem to have to be imposed. If the sick man himself is lacking, those nearest to him seem able to answer for him, as interpreters of his will.

When, besides the good effect, certain harm will follow, and no other remedy is at hand, the cause is to be estimated from the proportion between the hoped-for good and the evil which is feared. But never, as has already been said, for the sake of exploration can dangerous remedies or "operations" be tried on the sick man, even consenting. Cf. Lehmkuhl, I, 1183, V.

Concerning the use of morphine and hypnotism, it was treated, I, 478, and above, 325.

They cannot cooperate in direct abortion. To give an obstinate woman a harmless potion is not illicit, provided, however, that the physician not simulate an evil action; but he ought to beware of scandal and also of the penalties of the law, if an abortion, following by chance, is attributed to him as author.

2. They ought to fulfill the offices of spiritual and temporal charity, frequent occasion of which is offered to physicians. Therefore they will take care that they themselves can in a case of necessity validly confer baptism, especially on fetuses; they will make a dying man aware of his state in time, so that he can provide for his salvation and also for temporal affairs. It is better that they perform this themselves, nor for the most part do they have grave inconveniences to fear for themselves from it. But if others can and will make the warning, it is enough that these be made more certain. They can be excused from grave obligation if either they know that all things have already been ordered, or they hold it certain that it will profit nothing because of the perverse disposition of men. Yet this will rarely happen.
3. They cannot institute more visits in number than the true utility of the sick man demands; or than the solace suggests which is expected from the reasonable will of the sick man or of his family. Say the same concerning remedies to be administered.
4. They cannot exceed the usual rate in fixing a price, yet with account taken also of his skill and reputation. From the poor they cannot exact except the lesser price which it is customary to concede to them: for that alone the poor have tacitly promised.

II. They sin against justice itself when they violate these offices. Nor can those physicians be excused from grave sin who, after making an agreement with a surgeon, persuade clients to operations which are not necessary, for which they themselves obtain from the surgeon a reward for the counsel. Say the same if they prescribe superfluous medicines to be taken.

III. A physician hired by a community: a) from justice is forbidden to desert the sick in time of plague; b) from justice ought diligently to care for those for whom he is hired. For a stipulation in favor of a third party is valid from the law of nature, and the third party, when he calls the hired physician, ratifies the stipulation. Physicians not hired, if they decline grave danger of life, can with difficulty be accused of grave violation of charity, unless probably, while plague raged, they would have saved many who now die.

X. On Pharmacists

It will be enough to say one thing: that they furnish good and accurately prepared remedies; and that they beware lest they offer for sale things which are destitute of every useful or honest use. Cf. n.

145.

XI. On Brokers

Notion. Day by day more persons occur who are ready, after a fee has been obtained, either to do something for others or to assist others in some undertaking: to such an extent that catalogues of persons from whom alms for good works can be hoped are saleable for a price. If someone is considering a long journey, a society offers itself for procuring every convenience of the journey; if someone wishes either to sell or to buy some house, there is one who seeks out for him a buyer or a seller; if someone has a litigious cause, there is one who wishes to render the way of success more level for him; there is one who investigates unknown heirs concerning unclaimed inheritances so that he may warn them; nor are those lacking who are eager to have a part in concluding and dissolving marriages.[1]

Let us call all these by the name of brokers.

From justice itself these ought: 1. to commend nothing which is not worthy of commendation; 2. to employ the promised diligence and not to desert an undertaken cause for a better one, in such a way, for example, that they cannot promise their labor at the same time to two parties whose utilities are contrary; 3. to abstain from every fraud; 4. to be content with an honest price.

Indeed the delicate cases of conscience to which the arts of brokers give place can scarcely be numbered.

[1] The German Code, art. 656, removes every obligation from the brokerage-price promised for a negotiation of this kind concerning marriage. Yet it denies repetition of the price paid.

Summary

General Matters. The same or a similar obligation and commutation of rights which a contract between private persons works, the undertaking of an office begets, except that a contract is always a voluntary juridic act, while an office can also be imposed on one unwilling, on account of the common good.

An office cannot be assumed by one incapable without injustice; nor can one, with justice preserved, offer himself for the exercise of an art without sufficient skill, unless lack of a suitable person or another public cause excuses the intervention or assumption of the office.

An office undertaken is then to be fulfilled from justice with the diligence promised expressly or tacitly. Nor does an inconvenience connected of itself with the office excuse from that diligence.

Only on account of true and just causes can someone, after abdicating an office, ask for a pension from the public treasury or from the pension fund.

II. On the Judge. The judge, or magistrate, not only declares the right, but speaks the right, i.e. constitutes the proximate title, as it were by a particular law, either of the right of the parties or of the penalty to be sustained by the accused.

In beginning and prosecuting a process, he ought to observe the order prescribed beforehand by law. Between the civil and canonical forum there is this difference: that a civil judge can judge only causes brought to him either by private persons or by the fiscal promoter, while an ecclesiastical judge often

himself commands or executes the inquiry and instruction of a cause. Therefore he himself ought to attend to that rule of natural equity, that, without sufficient indications, he not begin an inquiry against someone in particular, nor without half-full proof order anyone to appear as accused.

For the reputation of the accused person is not accustomed to remain intact. I except a cause of prevailing public necessity.

A lay judge also ought to beware lest he usurp causes of the ecclesiastical forum, with the manner observed in which the privilege of the ecclesiastical forum is urged by the Church in his region.

Moreover, in a criminal cause he cannot condemn anyone unless from the acts it is established to him with moral certitude that he is guilty. If by private knowledge he has known as innocent someone who has been publicly convicted, it is the opinion of grave doctors, and of St. Thomas himself, that he indeed can condemn without injustice; nevertheless today in practice he can and ought to save the innocent man.

In a civil cause, he can and of himself ought to settle doubts of law according to his own founded opinion concerning the law; yet it is lawful for him also to assent to the jurisprudence of the superior court, as to a greater authority.

Doubts of fact for the most part will be solved by the rule which imposes the burden of proving on the plaintiff. But he does not violate justice who, in equal probability, while observing the laws, adjudges the whole to one party; yet he can also have the probable account of the right of the other party which the laws permit, for example in dividing the expenses of the suit.

He is not unjust who accepts gifts liberally offered, but observance of the law forbidding this is altogether to be commended. Those things, however, which he has exacted or stipulated for pronouncing a just sentence are to be restored; but not for an unjust sentence which he in fact brought: here, not there, some title seems to exist.

In general it pertains to the probity of a judge that he have no consideration of persons or causes, excepting those causes to which, from the law itself, favor is to be given in doubt.

III. On Jurors. Jurors can and ought always, by their negative answer, render free from penalty one whom they know to be innocent; nor can they pronounce as guilty anyone except one who has been convicted according to the acts.

But let them beware lest they be scandalously lacking in their office if, on account of reasons wholly extrinsic to the merit of the cause, such as political passion or appetite for vengeance, they deny that manifest crimes have been committed.

IV. On Arbiters. Freely chosen by the parties who have determined to settle a lawsuit by compromise, they ought to bring sentence according to law, unless they are permitted to compose the business from equity and good.

Those designated by a judge should willingly and without zeal for parties perform their office.

V. On Advocates or Patrons of Causes. A patron of causes, in a criminal cause, does not violate commutative justice if he strives to snatch even the truly harmful person from penalty; but those who, by right and wrong means, and by abusing the ignorance or passions of jurors, impede public

vindications, can sin even gravely against various virtues, and socially offend due piety and charity toward the fatherland.

In civil process they cannot either undertake or prosecute a certainly unjust cause; they are permitted, with justice toward the other party preserved, to furnish doubtful causes with suitable arguments, provided they warn their own client concerning the uncertain success.

N.B. What is lawful for a witness and for an accused person will be said below, where truth is treated.

VI. On Other Ministers of Justice. Whether higher or lower, they ought to fulfill the office diligently and faithfully, sparing the reputation of persons and tenacious of secrecy.

A manifestly unjust sentence cannot be completed by execution, unless perhaps there is question of goods which someone can renounce.

VII. On Notaries. A notary ought to be skilled and diligent, so that he not only may compose valid acts according to the norm of law and write them faithfully according to the will of the parties, but also know how to compose them in that manner which spares considerable expenses for the parties. He ought usefully to manage the affair of his clients, for example in ordering an auction.

Since he is not an exactor of taxes, he violates justice no more than the parties themselves if he cooperates in defrauding certain taxes.

VIII. On Physicians and Pharmacists. Besides diligent care of the sick, physicians and pharmacists ought to abstain from those contracts by which, through non-necessary medicines or operations, they impose useless expenses on clients.

IX. On Guards of Persons or Things. He who, privately or publicly, has been set over guarding persons or things ought, both by his own vigilance and by judicial denunciation, to protect persons and things from injuries, even with the danger and inconvenience tacitly promised in undertaking the office, according to the reasonable will of the masters. Wherefore sometimes, from the highest rigor, without the oath being injured, guards can turn aside. This holds also concerning those who have been set over the exaction of tolls. Cf. Lehmk., I, 987.

X. On Brokers. Brokers, or mandataries today of manifold name, who, under some title, undertake to care for the affairs of other physical or moral persons, or in some way assist them, from justice itself owe: 1. to those who hired them, fidelity and diligence; 2. to all, the negative offices of justice, by which they are forbidden to commend things which are not to be commended, or to deceive someone by fraud.

Chapter VIII: On Delict, Quasi-Delict, and Fault to Be Furnished

I. On Delict. [1] 1. Civil delict must be carefully distinguished from penal or criminal delict. Penal delict is defined by canon 2195, § 1: "An external and morally imputable violation of a law, to which a sanction has been added." The sanction can be defined either perfectly, as if for theft a penalty of six months' prison is established, or less perfectly, as if, for the various circumstances of the case, the penalty is permitted to be determined by the judge between a maximum and minimum limit; and it can also, at least in the canonical forum, be fully committed to the judgment of the judge, as when it is said: "let him be punished with suitable penalties." - Concerning penal delict, this holds: no penalty without law. According to this, the Code, c. 6, 5°, declared abrogated all penalties of which no mention is had in the Code.

2. But civil delict is every illicit and damaging fact committed with the intention of harming.

An illicit fact is required, because "no one seems to act by deceit who uses his own right" [Law 55, Dig. *De regulis iuris* (L, 17)].

A fact can be damaging because of emergent damage, or a positive detriment by which someone begins to have less than he had; and because of ceasing gain, by which someone has less than he would have had without the illicit fact.

Damage can be of the material order, whether it affects a thing or the body, so that it is estimable by a price, and it can be of a superior order, in reputation, in the soul, in affections, etc. It is certain that every economic damage is at least to be compensated with money. Sometimes also damage of a superior order can be repaired in its own order: disease by recovered health, reputation by an efficacious retraction. But does moral damage, as such, give place to pecuniary reparation? The matter is not so settled among jurists. Yet tribunals are accustomed also to establish that certain moneys are to be paid for damages of the body itself as such, or for damages of the moral order.

The intention of harming supposes a voluntary fact commanded by a deceitful or malicious will.

But reparation of damages on account of delict can be sought either from a contentious tribunal, and then as the principal object of the suit, or also from a criminal tribunal, as an accessory of the criminal process. By the name civil party in a criminal cause is called the private person who seeks such reparation of damages.

II. On Quasi-Delict. Quasi-delict excludes the intention of harming, but arises from necessary diligence (positive or negative) having been omitted, which, had it been applied, the damage would not have been inflicted.

Diligence is imposed either immediately concerning the very things to be preserved, or concerning animate causes which can beget damage: animals, children, persons whose labor had been hired.

The quasi-delict itself supposes a fact voluntary in this sense, that by greater caution or attention the damage could have been avoided. But defect of advertence does not take away quasi-delict.

[1] On the whole argument of this chapter, cf. Pacifici Mazzoni IV, p. 218 ff., 344 ff.; and Colin et Capitant, II, 360-403.

III. On Fault to Be Furnished. 1. Fault is distinguished as theological and juridical. Theological fault is the sin itself by which God is offended; juridical fault consists in the omission of diligence due according to the laws. This fault can be broad or gross: omission of common diligence, i.e. the diligence customarily applied by all; slight: omission of the diligence which an alert man is accustomed to apply, which can be divided into slight fault in the abstract and in the concrete, according as abstraction is made from the person who is blamed or not; very slight: omission of exquisite diligence.

A distinction of grades of this kind is found in every law. Thus, in England, Slater, *A manual*, I, 409, alleging Chitty, *The Laws of Contracts*, distinguishes *ordinary neglect*, *gross neglect*, *slight neglect*.

From delict or quasi-delict, the furnishing of very slight fault is owed. From contract the general rule is that slight fault in the abstract is furnished. This obligation is increased or diminished according as the contract is in favor of the debtor or of the creditor, or according as the contract itself has been imposed by necessity: as in a "miserable" deposit, i.e. one which had to be made from an unforeseen event.

In the Canadian Code Q., a contract never imposes more than the diligence of a good father of a family.

A fortuitous case is not furnished of itself, unless a delict has intervened, or the debtor has been in delay (German Code, 287). The German Code treats this argument more fully than the rest, arts. 276-292 and 823-853. Cf. also Swiss Code of Obligations, arts. 41-61.

In the canonical forum, a fortuitous case is not furnished; however, the imputation of omitted diligence is committed to the prudent judgment of the judge (c. 2203, § 2), almost as in art. 43 of the Swiss Code of Obligations. At the same time, however, even in ecclesiastical matter, just civil laws concerning contracts are to be observed. Therefore an ecclesiastical judge will be able and obliged to urge those laws.

In the forum of conscience this perpetual rule can be proposed: before the sentence of the judge, a grave obligation of furnishing fault requires, besides grave matter, grave theological fault, unless the furnishing of a fortuitous case or of slight fault has been formally promised. But the gravity itself of fault in a contract depends on the diligence which, expressly or tacitly, greater or lesser according to the various contract, was promised, and on its voluntary omission in more or less notable matter. But the diligence which is imposed by civil law is not yet judged to have been promised by the parties. The circumstances are to be consulted. And in general, if, conscious of danger, in dangerous actions you omit that diligence of precaution which men of the same condition are commonly accustomed to have, you sin gravely (unless perhaps you had already determined to receive the damages upon yourself) and are held for the damages which follow. In doubt concerning fault, you are not held.

After the sentence of the judge, the money which has been imposed on account of mere juridical fault is owed in conscience, provided this fault at least has truly been committed.

Therefore, if in fact the diligence was applied for whose omission someone has been condemned to repair damages, that sentence, inasmuch as it is founded in an error of fact, begets no obligation of conscience, so that after its coerced execution there is place for occult compensation.

Summary

I. Civil delict is an illicit and damaging fact committed with the intention of harming; quasi-delict is the same fact, without the intention of harming, committed with juridical fault.

II. Fault to be furnished. According as exquisite diligence, or that of an alert man, or common diligence is required, the fault to be furnished is called very slight, slight, gross.

Damages of omitted or delayed execution, or of another's damaged thing, in the internal forum, always, before the sentence of the judge, are estimated according to theological fault: this must be grave in order that a grave obligation, even in grave matter, arise; but in the external civil forum, they are estimated according to juridical fault, or the omission of diligence which positive law imposes.

From delict or quasi-delict, very slight fault is juridically to be furnished. A fortuitous case is generally not furnished.

In the canonical forum, imputation is made according to the prudent estimation of the judge, unless the civil law itself must be applied.

Chapter IX: On Inheritance

Utility. Although many particulars concerning entering upon and dividing an inheritance must be permitted to jurists, it is altogether opportune, indeed necessary, that the moral theologian possess accurately in mind certain more general things concerning this broad argument. Instructed by these notions, he will be able more easily to think rightly concerning positive law and prudently to solve cases or give counsels.

I. Definition. Inheritance is a mixed mode of acquiring by the law of nature and by positive law, by force of which one succeeds into the universality or a determined part of the patrimony or goods of another deceased person.

We call it a mixed mode, because by a certain natural right connected persons occupy the place of the deceased in goods which, by reason of the very connection, already seemed to pertain to them; but again the possessor himself of the goods or patrimony chooses and designates for himself a successor in his affairs; at the same time, however, many things concerning the persons who succeed and concerning the goods which they obtain and concerning the reason by which the peculiar will of the possessor is to be composed with the connatural right of the family would remain uncertain unless they were accurately defined by positive law.

Moreover in the definition we mention only universal succession or succession by universal title, because although, as we shall see, not in every law are all successors by universal title at the same time heirs, nevertheless it is certain that those who obtain only definite goods of the inheritance are not heirs but merely legatees.

II. The Twofold Proximate Source of Inheritance. One inheritance is legitimate, or from intestacy, but the other from testament. This will be better understood after a certain historical notion has been handed down.

Historical. 1. For, in the regions of Western culture, the right of inheritance is historically conceived according to a twofold reason. By Roman law, by which dominion and patrimony are considered more as something personal, individual, the heir properly comes to be from the will of the deceased, so that institution of the heir is the head and foundation of a testament. The legal ordering of succession then is judged merely to supply the testament and is established according to the presumed will of the deceased. In that law a twofold inheritance is distinguished: testamentary and legitimate or legal or from intestacy; but the principal one is testamentary.

2. On the contrary, by ancient Germanic law, and hence by Frankish law, by which patrimony is possessed rather as familial, God alone is said to make heirs; "heirs are begotten, not written." Wherefore Tacitus (*Germanicus*, 20) noted that there was no testament among the Germans. When afterwards, especially by the authority of the Church, testaments were introduced, these regarded the division and a certain attribution of goods, but not immediately the institution of an heir, so that there was one inheritance, i.e. the legitimate.

3. But by present-day laws a certain composition of each reason has been made. By French law, the more important inheritance, and the one more properly so called, is from intestacy; by

testament legatees are made, yet in such a way that gradually, by the help of tribunals, their condition has become similar to that of heirs, at least when they are called by universal title. Likewise in the U.S.A., only heirs from intestacy are called *heirs*, while those who succeed from testament are called *devisees* and *legatees*. Yet by the full liberty of disposing which it recognizes for parents, the law of England imitates Roman law, while most Latin laws, by establishing a legitimate portion, have in part adopted Germanic principles. Nevertheless the order of succession in Latin law is made according to the presumed will of the deceased, with equality therefore observed among children, whom the father is presumed to affect with equal love; while in the law of England the solicitude of preserving the familial patrimony seems drawn from Germanic law.

An heir, in Latin law, continues the person of the deceased and therefore receives the goods and is held beyond the powers of the inheritance, just as, in Roman law, independently of the goods, he assumed the obligations of the deceased; while in the Code of Germany and the U.S.A. (except Louisiana, which, as was said, uses the Latin regime) the heir receives the goods immediately and is not bound to pay debts beyond the powers.

4. By international agreements the mode is defined by which laws concerning successions are applied to citizens in another region and to foreigners in one's own region. Frequent commerce among nations has made agreements of this kind necessary. Thus personal statutes are distinguished, which hold a citizen everywhere, and real statutes, which govern goods from the place where they exist.

III. Composition of the Inheritance. 1. In more than one law there has been instituted, in favor of heirs but not of creditors and legatees, the so-called collation of goods. By this institution, an heir who wishes to enter upon the inheritance (not therefore if he renounces the inheritance) is obliged by law to bring into the lying inheritance whatever, as capital, he has received from the author while living, by direct or indirect donation. And legacies themselves made to an heir are imputed to the hereditary part. This is done from the presumed will of the donor or testator, who is judged to have wished to preserve equality among the heirs. Wherefore, after signifying his will, the donor can, within the limits of his faculty of disposing, exempt the donee or legatee from this obligation. It is enough, for example, that in the testament he say: I bequeath beyond or outside the legal part (*par préciput et hors part*). And of themselves, on account of a different presumption recognized by the law itself, some things, such as support and gifts customarily made, moderate donations from hand to hand, are exempted from collation to be made.

But in the forum of conscience, a tacit remission of collation, provided it is certain, can suffice.

2. The goods of the deceased either are judged to constitute one patrimony, as in Latin law, or, on the contrary, several masses are distinguished, either from origin or from nature. Thus, in England and in the U.S.A., goods are distinguished which constitute *real property* and goods which are *personal estate* or *personality*. Social considerations have now tempered Latin law by exempting, under certain laws, the family house or *homestead* from necessary division among the heirs.

IV. Acquisition of the Inheritance. 1. Possession, in several present-day laws, belongs to the legitimate heir from the first moment at which their author died, and without any apprehension of goods; nor does there exist of itself that lying inheritance of Roman law, the very possession of which had to be acquired. Thus in Italian and French law, and something similar in most Federated States of North America, is had. Therefore the possession of the deceased continues in the heir, sometimes also in the universal legatee. This possession is called in French *la saisine héréditaire*.

2. Perfect acquisition nevertheless does not happen without acceptance. Entry upon the inheritance can be made by an express or tacit act: as if the heir performs those things which only an accepting heir can legitimately do. He who dies before he has pronounced his will concerning the inheritance transfers the faculty of accepting to his heirs. Acceptance must be made absolutely. Yet in Italian, French, and generally in Latin law, the inheritance can be accepted either simply or with an inventory reserved (*con beneficio d'inventario*). This is the force of that clause, that if the inventory has been duly made within the stated time, the heir can accept the succession without the obligation of paying debts beyond the powers of the inheritance. But because simple repudiation is judged to honor the deceased little, acceptance with reservation of inventory is a mode of reconciling the honor of the deceased with one's own economic utility.
3. Renunciation of the inheritance is made, in the law which we use, by declaration before the conciliating judge or praetor. It admits no condition or limitation. But by Italian and French law someone can refuse to succeed from testament and accept the inheritance as legitimate heir; while German and Swiss law prohibits him from rendering various wills and legacies of the testator ineffective by an option of this kind.

But what if the heir neither positively accepts nor positively repudiates the inheritance? For the most part there will be another, for example a creditor, who will compel him to do something definite. But if he has had to do nothing, it is not clear in our law whether, after thirty years, the faculty of renouncing or the faculty of accepting has been prescribed. In Italy rather the faculty of accepting is thought to have been extinguished.

4. As to the mode of acquiring, there is to be distinguished an acquisition made in one's own name and the acquisition of one who enters upon the inheritance as representing a deceased parent. If the inheritance is entered upon in one's own name, division is made into individual heads, or man by man; but if the heirs come as representing the author, division is made into stocks, i.e. they receive together, afterwards to be divided among themselves, the part which that parent would have obtained if he had lived. This case especially occurs when, in place of the deceased father, the children have to enter upon the inheritance of the grandfather or even of the uncle.
5. Renunciation of the inheritance of a living person is generally invalid; but agreements concerning future succession are admitted by one law and excluded by another.

Article II: On Inheritance from Intestacy

§ 1. Juridical Exposition

I. Distinction of Heirs. Some heirs are simply legitimate, who are called unless they are excluded by testament; others are necessary (*legitimari*), who cannot be excluded wholly. Yet this distinction does not exist in every law. Necessary heirs are offspring, for the most part also parents and ascendants, rarely, but for example in the Swiss Code (470-471), brothers and sisters. Quite often today the surviving spouse cannot be excluded fully. Observe that, if you except the spouse, the rest are not called, much less are they necessary, unless the offspring of the deceased are lacking. Commonly some part is to be reserved to the illegitimate child himself.

The quantity to be reserved is either a determined part of the inheritance itself or a determined part of the portion which falls to them from intestacy.

Thus by Italian law (805 ff.) half the inheritance must be reserved for offspring, but a third for ascendants, if they are called because offspring are lacking. A portion of usufruct is reserved for the spouse. In French and Belgian law (913-914), and Swiss law (960 ff.), the part varies according to the number of children. For to one legitimate child half the inheritance is reserved, to two two-thirds, to three or more three-fourths. To ascendants a fourth or half part of the inheritance is to be reserved according as they survive in one line only or in both. - By the German Code (2303), half the portion assigned by law is to be reserved to offspring, to father and mother, and to the surviving spouse. - In more than one republic of Latin America, freedom of testating is restricted only by the obligation of support or suitable sustenance. Thus in Costa Rican law, 595; in Honduran law, 1118, 1119; in Mexican law, 3323, 3324; in Nicaraguan law, 1184 ff.; in Salvadorian law, 1153; while in the republic of Argentina (3627), the reservation can reach four-fifths. In England there is full freedom of testating, except for the regime of certain goods which are called *entailed*. Nor is freedom of testating limited by the Canadian Code Q. 831. In the U.S.A. certain States have restricted this freedom at least concerning pious legacies.

A twofold line of blood relatives is distinguished: direct, which is constituted by persons of whom one has origin from another immediately or mediately (*lineal consanguinity*), and transverse or collateral (*collateral consanguinity*), which embraces persons who have a common author with the deceased. Here there are to be distinguished the full-blood relatives (*whole blood*), who by reason of each parent are related by blood to the deceased, and others (*half blood*), who by reason of only one parent are related by blood; then more strictly those are called *consanguinei* who are such by reason of the father alone, while those who are joined by reason of the mother alone are called uterine.

While in canon law and also Anglo-American law, the degree is always estimated from the greater or lesser distance from the common author himself, so that if, in the collateral line, they are separated by unequal distance from that author, the degree is defined by the greater distance, in French, Italian, German law, etc., even in the collateral line, there are as many degrees as there are generations by which one is distant from the other.

II. General Rules. 1. Inheritance from intestacy is deferred to those proximately joined. Yet regard is had to consanguinity alone, with affinity neglected, if you except the spouse, whom recent laws have begun to favor more than formerly.

2. Descendants for the most part exclude all others; while proximate collaterals are accustomed to concur with ascendants.
3. Among brothers, the full-blood commonly obtain a greater part than those who have only the father or mother in common.
4. When the regime of community has prevailed between spouses, that community necessarily has an end by the death of one; and the surviving spouse obtains, as partner, half the common goods and burdens. If the survivor is the wife, since for the most part she has had no part in administering the community, there is also granted to her the option of reserving the inventory, for prudently defining whether it is expedient to accept or repudiate the part of the patrimony.
5. Natural children succeed from intestacy only to the parents by whom they have been acknowledged. If they concur with legitimate children, they can acquire nothing beyond the part assigned to them by law. Sometimes only support can be bequeathed to adulterine or spurious children.
6. As to professed religious, those professed of simple vows of themselves acquire for themselves inheritances deferred to them. Do they need, from the vow of poverty, the license of Superiors for acquiring or repudiating them? The Constitutions are to be seen. The obligation cannot be demonstrated from common law. Those professed of solemn vows cannot, from common law, acquire the same inheritances for themselves. But in an Order capable of possessing, they acquire them for the monastery (i.e. the convent or province); in an Order incapable, for the Holy See. Yet in either case, it must be seen whether before solemn profession they had disposed otherwise concerning these inheritances. For renunciation concerning present goods is commanded to be made by c. 581, but concerning future goods it is not prohibited.

III. Examples of Civil Regime. A. Sketch of the Italian Regime,. to which the French, Belgian, Dutch, and several others are similar. Observe, however, that by some recent laws the right of succession from intestacy in the collateral line has been more circumscribed. For by the Belgian fiscal law of 11 Oct. 1919, collaterals beyond the fourth degree are no longer called from intestacy unless they have origin from a brother or sister of the deceased and thus represent a brother or sister. The French law of 31 Dec. 1919 excluded collaterals beyond the sixth degree from succession from intestacy, unless they were the offspring of a brother or sister; in which case it is enough that they be joined within the twelfth degree. The Dutch law of 17 Feb. 1923 established almost the same.

Therefore, by Italian law four orders of heirs are distinguished: 1. those who are called by right of family: legitimate blood relatives; 2. those who are called by right of blood: natural blood relatives; 3. he who is called by right of marriage: the surviving spouse; 4. he who comes by right of sovereignty: the State. Those who precede in order must not rarely concur with a successor of an inferior order.

1. Legitimate descendants are preferred to all others, with a certain right of the natural child and of the surviving spouse nevertheless preserved. In the first degree, succession is made by heads; but by stocks when some represent a deceased father or ascendant. - 2. After legitimate descendants, the legitimate or natural father and mother come with equal right, or either one surviving. If both are lacking, the inheritance is devolved to the nearer ascendant. If there are

several of equal degree, one half part yields to the ascendants of the paternal line, the other to the ascendants of the maternal line. At the same time the surviving spouse concurs, so that, according to the various case, he or she receives a third or fourth part of the inheritance (C. Ital. art. 751). - 3. After ascendants, or rather together with them, brothers and sisters or their descendants are called, and these indeed by right of representation. Full-blood brothers obtain twice as much as consanguine or uterine brothers. But the same collaterals concur with the parents or ascendants of the deceased, yet in such a way that a third part of the inheritance comes to the ascendants; and with the spouse, to whom a third part of the inheritance is owed. - 4. After them other nearer blood relatives are called, but not beyond the tenth degree. Yet the surviving spouse receives two-thirds of the inheritance; indeed the whole inheritance if the blood relatives are more remote than the sixth degree. - 5. If these are lacking, the treasury comes. - To natural children a certain portion is reserved in the inheritance of the parents alone. - But to the spouse there falls, according to the various case, usufruct or even dominion, in part or in whole, of the inheritance.

B. Sketch of the German Regime. By the Code of Germany (1924-1936), five successive orders are distinguished. The first order contains only descendants of the deceased, either in their own name, if they are immediate, or children, or as representing a parent (1924); but the inheritance is divided equally among the children. The second order embraces the father and mother of the deceased and their descendants. If both father and mother live, each obtains half the inheritance; if either one is dead, the descendants from that one divide among themselves half the part of the inheritance. If descendants are lacking, the whole is devolved to the surviving parent. If each parent has died, half the part is attributed to the offspring of the father, half to the offspring of the mother, so that full-blood brothers have a part in each line. The inheritance is divided equally among brothers and sisters; nephews and nieces, however, are called by right of representation (1925). The third order includes grandfathers and grandmothers and those descending from them, and the matter is disposed as for the second order. But if no one is found in that order, great-grandfathers and great-grandmothers or those descending from them are called to the inheritance in a similar manner. The fourth order retains great-great-grandfathers and great-great-grandmothers or those sprung from them. In this order division is made only by heads. Finally, the fifth order is composed of more remote ancestors and their posterity, without any right of representation.

Therefore the perpetual rule is that when the inheritance cannot be attributed to the children or posterity of the deceased, the parent is preferred to the posterity born from him.

The surviving spouse obtains a fourth part of the inheritance if there are heirs of the first order; half, if the inheritance is devolved to the second order. But he or she excludes the later orders, unless great-grandfathers or great-great-grandfathers are present: to these he or she must yield half the part. Besides, when he or she concurs with another order or with ancestors, he or she can take for himself or herself the household furniture beyond his or her portion.

If other heirs are lacking, the treasury can take the inheritance.

C. Sketch of the English Regime. In deferring inheritance from intestacy, that property which is called *Personal Property* and that which is named *Real Property* are to be distinguished (cf. above n. 353).

Real Property, if there is no offspring, is deferred to the nearest male heir. But if offspring is had, it is attributed to the eldest son or, if he has died, to his son. If all male offspring is lacking, dominion is adjudged jointly to all daughters.

Personal Property is divided in such a way that a third part falls to the widow, and the remaining two parts to the children without distinction of sex.

If the wife herself dies without testament, her patrimony is attributed to the husband, or, if he has died, to the offspring.

D. Sketch of the Regime of the U.S.A. (except Louisiana). The matter is committed to be ordered by the individual States. Everywhere the children or posterity of the deceased are called first, and in such a way that children or the posterity of children come by right of representation. If offspring is lacking, brothers, sisters, and parents of the deceased come; but in various ways the rights of parents are composed with the rights of brothers and sisters.

From common law, brothers not full-blood had a part in those goods alone which make up *personality*; but this law has been changed in many States, so that either all brothers are in an equal place, or the full-blood receive double.

In many States all the rights of children fall to adopted children.

From common law, illegitimate children were children of no one, without any right of inheritance. Now they succeed to the mother and for the most part also to the father if they have been acknowledged.

Almost everywhere a dower from the inheritance (*dower*) is attributed to the widow; in some States a similar right under the name *curtesy* subsists in favor of the surviving husband.

Besides, the surviving spouse obtains a place among the heirs themselves, which varies according to the various States, nor is it always the same for the husband as for the wife.

§ 2. Moral Exposition

I. Obligation of the Laws. Laws by which the order of succession is defined oblige conscience even before the sentence of the judge.

II. On the Wife and Children of a Merely Civil Marriage. Since civil laws not rarely estimate legitimacy from civil marriage alone, the question arises whether children born from a merely civil marriage can accept an inheritance, especially if other children were born from a merely religious marriage. They seem able to accept the goods, but they succeed into the obligations of piety by which the parents were held toward their truly legitimate children: to these they owed at least support according to their condition. Cf. d'Annibale, II, 342, 22; Piscetta-Gennaro, III, 930-932. The reason is that legitimate children from the law of nature do not have a strict right except to such support, and in present-day society, that public peace may be secure, it is tolerated that temporal affairs be ordered according to the institution of civil marriage, while the right which natural law has conferred remains certainly intact.

But if a child who is legitimate only civilly has rendered juridically ineffective a testament by which a parent wished to favor his truly legitimate children, Piscetta-Gennaro, III, 932, rightly, as it seems,

recognize for these children the right of occult compensation. Nor do they dare to condemn the same children if, even without a testament, they secretly take the portion which civil law has reserved for legitimate children.

More difficult to us seems the solution of Card. Gennari (*Consultazioni morali*, t. 1, Cons. XXIV, *al quarto*) by which he denies to a merely civil wife the faculty of accepting and keeping from intestacy what the civil law attributes to a widow, and wishes that the inheritance from intestacy be divided according to true legitimacy. Namely, what civil law attributes to legitimate wife and children, the Most Eminent man adjudges to the woman and children who, according to the same civil law, are not legitimate. Will this half-use of civil law, against the will of the legislator, be accepted by all? This certainly was not admitted by C. d'Annibale, l.c.

III. On Collation of Goods. Since this obligation of bringing goods into collation rests upon the presumed will of the donor, as often as the donee is certain concerning an absolute will of donating, he can accept the goods, not report them, and dissemble. And in French law collation is not to be made unless it is sought by the other heirs.

V. On Debts to Be Paid. From the law of nature, heirs are not bound to pay debts beyond the powers of the inheritance.

Indeed, there are those who, judging the stricter disposition of law to be founded in the presumption of fraud or of voluntary consent, pronounce heirs immune from this obligation, even after the sentence of the judge. Yet at the same time they are accustomed to permit creditors to urge their civil right. Therefore occult compensation to him who had to pay more does not seem able to be permitted.

Article III: On Testaments and Last Wills

Because priests themselves are not rarely asked about testaments and last wills, and errors are frequently committed which bring no slight damages to pious causes and to domestic peace, it is necessary that the moral theologian possess certain, at least elementary, notions about the present-day sanctions of laws concerning testaments and last wills.

I. Notion of a Testament. 1. Almost everywhere today, a testament is a juridical, solemn act, essentially revocable until death, by which someone attests what he wishes to be done after his death concerning his patrimony, whether the whole of it, or a part of it, or certain of his goods. As an act, not a contract, it receives force from the will of the testator alone; as solemn, it must be clothed with certain legitimate forms in order to be valid.

In Roman law the direct institution of an heir was essential. Under the name of codicil came an act by which someone established that certain things concerning his goods were to be carried out after death, without the institution of an heir. Often it was, as it were, a supplement of a testament. A trace of that distinction still occurs in the Austrian Code, which, § 553, calls a testament a declaration of last will by which an heir is instituted, while a declaration of last will without the institution of an heir is called a codicil. In the Brazilian Code, under the name of codicil comes a private writing by which secondary last wills are signified. In English law, a codicil is a writing in which changes of a testament are contained. The Dutch Code, art. 922, in its definition of a testament does not even mention goods: "A testament or last will is an act by which someone

declares, in a revocable manner, what he orders to be done after death." In English law, no disposition of goods is necessary for the notion of a testament. A testament, *Will*, is a legitimate declaration concerning posthumous intentions.

2. A testament is everywhere a personal act: it cannot be made for someone by another. And certainly such substitution, if admitted indiscriminately, would often deceive the mind and will of him whose patrimony is at issue. Nevertheless, some Codes allow that parents make a testament for children who have not yet reached a certain age or who are mentally incapable. Such substitution, which Roman law had already admitted, is called pupillary substitution. It is admitted by the Portuguese Code, art. 1859 and 1861; Mexican, 3443 and 3444; Austrian, § 609, for the goods which the parents leave to the children.
3. In most Codes the individual testators are required to make separate testaments, and it is denied that the same testament can be conjointly made by two or more. Also rejected are dispositions which are made under the condition that the heir or legatee in turn should write the testator as heir or legatee in his own testament. Sometimes, however, joint testaments of spouses are permitted, as by the Austrian Code, § 583. More often in nuptial pacts, for example in Italian and French law, it is permitted that future spouses mutually leave to one another a part of the inheritance.

II. Form of a Testament. 1. Everywhere the ordinary form and the extraordinary form are distinguished, which latter is permitted only in certain circumstances. Those extraordinary circumstances are had in military testaments, in testaments of those navigating, in testaments in time of plague. There is also a Code, for example the Swiss, art. 506, which permits a special form when, on account of the absence of a public official and the impediment of the sick person, the ordinary form cannot be observed. But what must be well noted is that these testaments, when the necessity has ceased, must within a brief time be clothed with the ordinary form. It will be enough for us to speak briefly about the ordinary forms, and especially about the private form, since the official is solicitous for the right public form.

Almost everywhere there is had a private testament and an authentic testament, which can be public or secret, unless you prefer to say that the secret testament is of a mixed form. Not rarely, however, the form of a private testament is permitted only to those greater in age. Certain Codes admit a double form, public and secret, even for a private testament.

2. **On the Form of a Private Testament.** Generally, yet not universally, it is required that it be holographic. But the conditions which the holographic testament itself must satisfy vary accidentally.

In the Italian Code, 775, and the French, 970, it is required and suffices that it be written entirely by the testator's own hand, with a date indicating the day, month, and year, and therefore not necessarily the place, and signed by the testator. A signature made in the usual manner, even if it has something peculiar, as, for example, among bishops, plainly suffices. The signature is to be made at the end, or after the date. This is expressly required by the Italian Code and is safer in French law. Nothing else is required. Therefore no condition either of paper or of ink is required: even if you should write with chalk on a wall, that will suffice. - In Spanish law, 688, the holograph must moreover be written on

stamped paper (*bullata, timbre*) with the stamp bearing the year in which the testament is made. And after the death of the testator, it must be presented within five years to the judge of first instance, under the sanction of nullity. Moreover, the depositary of the holographic testament must present the testament to the judge within ten days; otherwise he will furnish damages (art. 690). - In the Dutch Code it must moreover be deposited with a notary, who receives the testament before two witnesses; and it has its date from the day of deposit (980). By a private holographic writing with a date, one can only designate the executor of the testament, make provision concerning one's funeral, and bequeath clothes (982). - For the Austrian Code it is enough that the holographic testament be entirely written and signed by the testator: the indication of the date and place is not essential (§ 578). - The same obtains in the Canadian Code Q., 850-854. - In the Swiss Code the holograph must be entirely written by the testator, indicate the place, year, month, and day, and be signed (§ 505, Civil Code). - In the German Code, adults can make a holographic testament with indication of place and day (2231). - In the Brazilian Code, a private testament, besides being written and signed by the testator, must be read to five witnesses and signed by them (1645, 1648). Only secondary dispositions and the designation of an executor can be made by a particular writing with date and signature: this act is called a codicil (1651-1654). - The Mexican Code does not admit a private testament unless the opportunity of an authentic testament is lacking. It then requires a declaration made orally before five witnesses. Cf. 3535 ff. - In the Portuguese Code a merely private or holographic testament is ignored. - In English law, according to the Wills Act (1 Vict. c. 26, s. 9), a testament must be written and signed at the end by the testator or by some other person in the presence of the testator and under his direction, and that signature will be made or acknowledged by the testator before at least two witnesses simultaneously present, who, before the testator, will sign the testament. - In U.S.A. law the conditions vary. Some States admit a holographic testament without witnesses; others also admit testaments made orally before witnesses. In most States it is not necessary that the signature of the testator be placed at the end, but they admit that it be at the beginning or at the end. In most States the witnesses, who are required in number either three or two, must be conscious that a testament is at issue, while in some they can be ignorant of the nature of the instrument. The simultaneous presence of the witnesses who subscribe is necessary in few States. Nor is it per se necessary that the place and day be indicated, although that omission is dangerous.

Moreover the Austrian Code also permits a private nuncupative testament. It is enough that before three witnesses simultaneously present the testator declare his last wills. The counsel is added that the witnesses as soon as possible note in writing what the testator declared. Cf. § 585. - The Swiss Code, 506, permits something similar when, on account of imminent death, impeded communications, plague, etc., the ordinary solemnities could not be observed. Then it suffices that the testator declare his will before two witnesses. At once one or the other witness notes the matter, indicating the place, year, month, and day. Both sign the instrument and deposit it without delay with the judicial authority, or, if the testator is an active soldier, with an official who is at least a captain. But that testament loses all force after fifteen days from the time when the ordinary form could have been used (arts. 506-508).

3. **On the Form of an Authentic Testament.** A double form is distinguished. a) The public form. The testator before a notary, judge, or competent official and witnesses declares orally

what he orders to be done with the goods after death. The official makes an authentic instrument concerning the matter, observing the legal solemnities. This testament is called nuncupative. In Germany a minor by birth cannot otherwise make a testament. b) The secret form. The testator approaches the competent official, hands him a wrapper, declaring before witnesses that his last wills are contained in it. This testament need not be written by the testator. It is enough that it be signed by him. Nor is even this required in every law.

4. Revocation of a testament can be explicit or implicit. Explicit revocation is made either by destruction of the private instrument, or by a clause by which, in another testament, every testament made before is said to be abrogated. Implicit revocation is made by a contrary disposition of a more recent testament. From this it is clear how important it is to know on what day the testament was made.

What can be done if the instrument of the testament has perished or has been lost must be sought from the positive laws.

III. On Succession Pacts. While some laws, for example those of Italy, France, and Belgium, excepting the faculty given to spouses of disposing of certain matters concerning a future inheritance through mutual nuptial pacts, altogether reject and invalidate pacts or contracts concerning a future inheritance, others admit that one may express last wills even by a bilateral disposition. This is a succession pact. It draws its origin from old Germanic law. These pacts are admitted by the German Code, art. 2274 ff., and the Swiss, 512 ff. The form of an authentic testament is required. Both parties must manifest their will before a notary or judge. By the Austrian Code, art. 602, pacts which regard the universal inheritance can be made between spouses alone.

This pact binds each party, so that per se it can be revoked only by mutual consent of the parties. For more, cf. the Codes.

IV. Various Objects and Modes of Last Wills. 1. Today it is whole and entire for the testator to constitute either heirs or legatees alone. It is not always clear what precisely the testator intended. The Italian Code, 760, the German, 2087, and the Spanish, 668, indeed call him an heir who succeeds from a testament under a universal title; but that clear distinction is had neither in the French Code nor in the Dutch.

2. Not from the law alone, but also from the style of the tribunals, it must be learned what things can be inserted in a testament usefully, what things in vain, or even not without detriment to the will of the deceased or to a pious cause. Attention must chiefly be paid to matters of the moral or religious order. There is a law which permits that the testator found something for an intellectual, moral, or religious end, and at the same time designate administrators of his confidence; while other laws require that the foundation to be administered be given to a moral person already recognized and competent. A legacy of Masses will not be made efficacious in every respect; indeed, in England it was rejected as superstitious, and only recently has it been admitted; in the U.S.A., because it is of interest to no living person, it happens that it has been invalidated. Dispositions concerning the exclusion of an assisting priest, concerning a religious or non-religious funeral, concerning cremation or customary burial, concerning the religious education of children: what they effect in individual nations must be sought from experts.

3. Peculiar incapacities are established lest certain persons obtain legacies. Sometimes, to protect public morals, a concubinary cannot receive legacies from an accomplice; sometimes, to cut off excesses, a man's second wife cannot obtain more than what the son of the first marriage will receive; sometimes certain persons cannot receive legacies in the last illness, such as a physician, a sacred minister, who, unless they are already otherwise joined by a bond of consanguinity, could abuse their authority.

4. Conditions attached to legacies or to an inheritance are not everywhere estimated as licit and possible in the same way. Thus, for example, the condition of widowhood is admitted here (cf. Italian Code, 850), elsewhere it is rejected; elsewhere, according to the form in which it is made, it will be valid or will be invalidated.

Impossible conditions themselves in French law (900) and Italian law (849) are held as not written; but other laws either invalidate the disposition itself, or distinguish among the impossible conditions themselves, or investigate the will of the testator to see which will is principal.

According to the Austrian Code, a legacy under an impossible or illicit suspensive condition is null; but if it is a resolutory condition, this is held as not written (§ 698; cf. also 712 and 700 for a condition forbidding marriage). - In the Swiss Code, conditions and modes contrary to morals or laws invalidate the legacy itself; if they are merely inconvenient or absurd to some third person, they are held as not written (482). - In the German Code, an impossible mode invalidates the legacy only when it is clear that the liberality would not have existed without such a burden (2195).

5. A mode or burden imposed on a legatee, if it is not fulfilled, does not deprive the legatee of his legacy, unless such was the will of the testator. But one law more easily than another will hold a mode as a condition without which not.

6. Substitutions are chiefly to be attended to. Substitution is, as it were, another institution, or the institution of another heir or legatee after the prior institution. It is distinguished as vulgar, fiduciary, and fideicommissary.

a) Vulgar substitution is had when the substitution of another is foreseen in the place of the prior one who will have been unwilling or unable to enjoy the largition. For example, I bequeath goods to Titius; if he has not accepted, or has died before me, let Caius be the legatee. This substitution is prohibited by no law.

b) Fiduciary substitution is had when the true legatee or heir is concealed under another person who is apparently instituted. This disposition is dangerous because of the not altogether certain interpretation of tribunals. Thus, when the true legatee is not incapable, this substitution in Italy is rather admitted on account of art. 829, which admits no demonstration of dissimulation (cf. Pacifici-Mazzoni, VI, p. 305); while in Belgium one must beware that the person named in the testament, at least from a true liberality made to him, can demonstrate himself to be the legatee, although besides this he must bear burdens. The directly instituted person who must hand over the goods to another, in whole or in part, is as it were the mandatary of the testator and is called a fiduciary.

c) A fideicommissum generally signifies a disposition by which the testator, trusting the heir or legatee, commits something to them to be carried out or handed over. Thus the fiduciary heir receives

a fideicommissum most properly.

But fideicommissary substitution properly consists in this, that the testator bequeaths goods to someone with the burden, that is, the strict obligation, of preserving those goods for some time or even until death, and then of handing them over to another designated person. Here, therefore, both are truly but successively instituted. A true substitution supposes a strict obligation. That the testator desires some other destination of the goods, that he expresses his wishes: this does not suffice for substitution. Nor can substitution be confused with a clause by which the testator has merely prohibited alienation: that clause, at least if it prohibits alienation in perpetuity or for the life of the legatee, perhaps can be invalid from another head, but not on account of substitution. Nor is substitution contained in a disposition by which the testator has bequeathed bare ownership to one person and usufruct, even lifelong, to another: both have been immediately instituted.

Temporary substitutions generally incur no reproach. But if the goods must be preserved until death and then handed over to another person, this disposition is admitted by some laws, while by others, with unequal severity, it is prohibited.

In French and Belgian law, 896, and Dutch, 926, they are so rejected that the institution itself is corrupted, that is, the principal disposition to which the burden is annexed. They are permitted, however, in favor of grandchildren or nephews, that is, sons who are born from a son or from a brother or sister. Concerning this exception, art. 1048 and 1019 of the French Code and 1020-1035 of the Dutch Code must be consulted. The same prohibition, circumscribed by a similar exception, is read in the Portuguese Code, 1866-1867, yet in such a way that the principal institution subsists (1869); in the Italian Code, art. 899, these substitutions are completely and without exception prohibited and invalidated, yet in such a way that the principal disposition remains firm (900).

In the Austrian Code, §§ 608 and 622, they are admitted; and also in the German Code, by the formal permission of art. 2100, but per se, with certain exceptions saved, they become ineffective if the substitution has not taken place within thirty years.

In Swiss law, 488, they are admitted once or for one degree; while in Brazilian law, 1739, they can be made up to the second degree; nor does the institution become invalid on account of the prohibited substitution (1740). The same obtains in the Canadian Code Q., art. 932.

N.B. There is also pupillary and quasi-pupillary substitution, by which rather another makes a testament in place of the incapable testator. Concerning it, see what was said above, n. 550, 2.

On Preserving the Legitimate Portion. Donations or testaments by which one disposes beyond what the legal supply allows are called inofficious. Now donations of revenues are never inofficious, nor are remuneratory donations, since they can be called in some way owed. But inofficious testaments or donations are not null, but necessary heirs can act so that the things donated and bequeathed are reduced to a just quantity. On the obligation of conscience, cf. below, 559, 560.

V. Execution of a Testament. Per se the right and office of executing testaments pertains to the heir or heirs.

But the testator can name an executor of the testament and attribute a reward to him. If he attributes none, in one law the office is gratuitous; in another law he obtains a salary, for example, 5 percent.

VI. Efficacy of a Testament. These things must be attended to. 1. The law is accustomed to establish within what time dispositions concerning goods are to be completed by execution. If it has expressly established nothing different, even for pious legacies the testator is judged to have accommodated himself to the civil law.

2. The mode by which legacies are obtained. In Canadian law they must ask nothing from the judge, while in other laws, unless the legacies are paid to them spontaneously, at least particular legacies must be obtained from the heirs or from magistrates.

3. Contribution of debts or burdens of the inheritance. First, no legacy is owed unless after all debts have been paid. Then, even for a pious cause, a strict right to a legacy cannot be constituted insofar as the legitimate portion is harmed. Particular legatees themselves must pay no debt of the deceased. But if they are universal legatees or legatees under a universal title, they must contribute to paying the debts in proportionate part. Yet not even in French law, except in a special case, are they held beyond the powers of the accepted goods.

4. The mode by which a legacy or part of an inheritance not attributed to the designated heir or legatee on account of repudiation or incapacity accrues to other heirs or legatees must be sought from the laws.

§ 2. Canonical and Moral Exposition

I. Canonical Exposition

Use and Tenor of Canonical Law. 1. Although by the general disposition of c. 1529 civil laws concerning contracts are canonized, nevertheless c. 1513 wishes those things to be firm which have been disposed "for pious causes, whether by an act inter vivos or by an act mortis causa," and therefore whether by testament or by donation mortis causa, by a person who by natural and ecclesiastical law, civil incapacity therefore not being considered, is freely able to establish concerning his goods. Wherefore heirs are to be admonished to fulfill the wills of the testator, even those which are destitute of civil solemnities. And he who, even through trust, has obtained a legacy and has refused to fulfill it must be compelled to this by the Ordinary, even by censure (c. 2348).

2. As to the solemnities required, in the external forum canonical proof, by two witnesses or by the hand of the testator, is required and suffices.

3. As to execution, "Ordinaries[1] are the executors of all pious wills, both mortis causa and inter vivos" (c. 1515). Others, however, can be designated by the testator. But these, when they have discharged the office, must render an account to the Ordinaries. Clauses contrary to this right of Ordinaries, which have been added to last wills, are to be held as not added (c. 1515, § 3).

By the law here constituted, unless the executor has refused or resigned the office, or unless he had to be removed, it is not lawful for the Ordinary to substitute an executor for him whom the testator has designated, or to undertake the administration himself; but he is rather given in aid to the legal and testamentary executors. Cf. d'Annibale, II, 369.

Commutation properly so called of pious legacies which can be fulfilled by execution, even if a proportionate cause is present, is reserved to the Holy See, unless the testator has given this power

to the Ordinary (c. 1517, § 1).

But if an obstacle of law or fact has impeded execution, then there is place for commutation understood more broadly, by which the will of the testator is preserved in the better way in which it can be, but either the burdens are diminished or they are converted into similar ones. Excepting the reduction of Masses, this commutation is also permitted to the Ordinary, after those whose interest is involved have been heard, c. 1517, § 2. Cf. Piscetta-Gennaro, II, 950.

[1] The Code does not say "Ordinaries of places."

II. Moral Exposition

I. Obligation of Making a Testament. 1. As to the active use of the faculty of making a testament, he must make a testament from commutative justice who by this means alone can fulfill an obligation of justice, for example restitution; from piety and charity, he who by this means alone can provide either for a surviving spouse, or for a legitimate child from a marriage not civilly acknowledged, or for an illegitimate child not legally acknowledged; he who by a testament can prevent grave lawsuits, for example concerning the division of goods; he who must take care lest a minor son be committed to a very bad tutor; he who by a testament can snatch the inheritance from one who would abuse it. - In the testament itself, brothers or sisters gravely in need cannot be passed over without a grave injury of piety, even in order to succor other poor persons or pious causes. St. Alphonsus, l. 3, n. 946. If they are simply poor, or if there is question of other blood relatives, there is only a light obligation of preferring them per se to strangers. Of itself, he is not to be blamed who, moved by no hatred, passes over blood relatives not in need or divides goods unequally among children. But neither is to be done without a just cause, lest cooperation be furnished for foreseen quarrels, dissensions, and enmities, yet of itself venial, since the testator uses his own right and the evils which follow are rather to be attributed to the avarice of the heirs. Just cause for passing over blood relatives can be higher and pious ends to which someone wishes to consecrate his goods; and for unequal partition among children, the greater merits and services of one, the greater need of another, and like reasons.

II. On Inofficious Testaments. In the forum of conscience, parents who make inofficious donations or legacies, whether openly or in a disguised form, a) do not violate commutative justice; b) they will be able gravely to violate piety, if without grave cause they have harmed the legitimate portion. Indeed, since liberty of making a testament seems to be restricted too much by our laws, any truly reasonable cause will excuse them from sin. Donataries or legatees, at least with justice uninjured, before the sentence of the judge preserve what they already possessed before the death of the testator or donor, or what they acquire by voluntary execution. Whether they violate another virtue must be gathered from the circumstances. - Necessary heirs can act for the reduction of dispositions, even if they have been made in favor of a pious cause.

III. Promise Not to Revoke a Testament. A sworn promise not to revoke testaments begets no obligation of justice, but, at most, only one of religion, which can be relaxed by ecclesiastical authority. Concerning the canonical value of the same promise doubt can be had today, since from c. 1529, in the matter of contracts, just civil laws are to be observed. If, however, the promisor has wished in this way to dispose irrevocably in the present concerning his inheritance, this disposition for pious causes will be valid by c. 1513 in the canonical forum and in conscience.

IV. Interpretation of a Testament. The clauses of a testament are to be interpreted according to the reasonable will of the testator. The time within which they are to be executed is defined by law and usages. The designation of a pious cause is presumed to have been made demonstratively, not taxatively, so that if the expressed application becomes impossible, another pious cause, as similar as can be, is substituted by the judgment of the bishop and with the executor assenting, unless he dissents without just cause. But the heir or executor who has handed over to an upright priest a sum of money for a definite number of Masses, after obtaining testimony, even oral, of the burden accepted and the stipend received, is freed from his obligation. Cf. c. 839.

V. Force of an Inform Testament. On account of various controversies about the origin of the right of making a testament and about the mind of the legislator, to whom some ascribe the will of wholly invalidating inform testaments, others only the will of making them rescindable, practically the heir is not bound to execute the profane dispositions of an inform testament; but the legatee is bound neither to restore what has been accepted nor to warn the heir about the defect of the testament. But if the heir acts, if the civil law is clear, the legatee ought rather to yield from charity already before the sentence. Today the right of occult compensation seems to have to be denied to the legatee from an inform testament. But he is not judged to compensate himself who secretly takes from the still undivided mass of the inheritance. Nevertheless, to the judge asking and tendering an oath, he will have to respond sincerely. If the sentence of the judge has intervened, it will have to be stood by. Yet the heir per se is held by the promise by which he promised the testator the execution of a will not solemnly expressed. By what kind of obligation? This must be prudently gathered from his mind and from the circumstances. The obligation will necessarily be one of strict justice, if in this way he impeded the will from being expressed in solemn form, or if the goods came to him on account of that promise.

VI. Testament for Pious Causes. 1. A pious cause or pious matter is called "whatever chiefly is done with regard for God and a supernatural end, to merit grace or glory before God, or in satisfaction for one's own or another's sins" (Molina, *Iust.*, d. 134, 1). Therefore today, on account of secularized hospices and the preaching of a merely natural altruism, what is conferred from human philanthropy upon lay institutes is not judged to have been given to pious causes.

2. That the heir or the burdened person be obligated, he must be certain concerning the absolute will of the deceased, for example because he has recognized the hand of the testator, or because the dying man manifested his will to him; nor must he believe one witness, even a very approved one. This is gathered from c. *Relatum*, II, *De Test*. (III, 26). With that certain knowledge supposed:

3. Because both the capacity of persons and the form here are to be estimated from canonical law, heirs cannot use merely civil nullity in order to omit pious legacies canonically efficacious. Yet it must be confessed, as Piscetta and Gennaro observe, that canon 1513, § 2, is conceived in words which introduce doubt concerning a strict obligation, since it is not said, "the heirs are to be admonished concerning the obligation of conscience of fulfilling the will of the testator," but it is merely prescribed, "they are to be admonished that they fulfill the will of the testator." But this tempered manner of speaking is explained both by solicitude to avoid difficulties of the civil external forum, and by ecclesiastical prudence and moderation, which does not wish souls to perish on account of temporal goods. Wherefore an admonition which is certainly

foreseen as useless can be omitted; and it is to be made in such a way that, with offense of persons avoided, it may persuade resisting heirs toward the way of recourse to the Holy See for an amicable composition.

Fideicommissary substitution also for pious causes will have to be executed. And the heir who, relying on French law, has rejected the legatee on whom a pious burden was imposed, in the place of the legatee and similarly as he, will be held by the obligation of executing the substitution. If the cause was profane, the legatee, if the law, as for example Italian law, invalidates only the obligation of the fideicommissum, will per se be able to accept the legacy and not fulfill the burden. But if at the same time the legacy is invalidated, the matter will depend on the prevailing will of the testator, according as he, the burden not being fulfilled, would have preferred the thing to be possessed by the heir or by the legatee.

Summary

I. Common Notions. Inheritance is a mixed mode of acquiring by natural law and by positive law, by force of which one succeeds into the universality or a proportionate part of the patrimony or goods of another person deceased.

Inheritance is distinguished as from intestacy and from testament.

Because hereditary transmission to connected persons and transmission according to the will of him whose patrimony it was are founded in the law of nature, which nevertheless must be completed and determined by positive law, inheritance is said to be a mixed mode of acquiring. But the succession of the heir is always into the universality or a proportionate part of the goods. He to whom a thing as particular is devolved is a legatee, not at all an heir.

II. Legitimate inheritance, or that which is deferred by law, varies, according to various laws, in principles, in ordering, and in effect.

1. **In principles:** either the law is judged to supply the will of the deceased, or to call the heir as if in the name of God, or to attribute the right of succeeding according to both reasons.
2. **In ordering:** some laws, according to the origin of the goods, divide the inheritance into two parts, one appointed to relatives of the paternal line, the other to relatives of the maternal line; while other laws divide the mass without that distinction; division is sometimes made by heads, sometimes by stocks; ascendants sometimes exclude collaterals or concur with collaterals. The right of the surviving spouse varies, as does the degree of consanguinity beyond which succession does not occur; the mode also varies by which illegitimate children or descendants are admitted to succession. The option of succeeding from testament or from law, to be left or taken away from intestacy, can exist.
3. **In effect.** The possession of the heir can begin either from the moment of death or from the acceptance or reception of the goods; positive acceptance can be required, or non-repudiation can suffice; simple acceptance and acceptance under a mode, for example with inventory reserved, are distinguished; hereditary succession can take place into the patrimony in such a way that the heir is held for debts even beyond the powers of the inheritance, or it can be limited to the goods, so that beyond the accepted goods the heir is bound to pay no debt.

Everywhere, morally, heirs simply legitimate or legal, who are called unless they are excluded by testament, and necessary heirs, who cannot wholly be excluded, are distinguished. Generally, anticipated renunciation of an inheritance, that is, of the inheritance of a living person, is invalid, and so is every pact concerning a future inheritance.

In the canonical forum, professed of simple vows acquire per se inheritances deferred to them, but professed of solemn vows do not per se acquire them; these acquire them either for a capable monastery or for the Holy See, unless, as it seems to us, before profession they disposed concerning these goods.

In the forum of conscience, heirs are not held beyond the powers of the inheritance; yet to him who has paid more either beyond the powers or after the sentence of the judge, occult compensation does not seem able to be conceded. Children born from a merely civil marriage seem per se able to stand by the civil law which holds them as legitimate.

III. Inheritance from Testament. 1. A testament is a juridical act, generally solemn, revocable until death, by which someone either institutes an heir and divides the patrimony, or simply declares what he wishes to be done after his death concerning the whole patrimony, or concerning its part, or concerning certain particular goods. For, according to the various law, the institution of an heir is essential, or a simple disposition of goods is permitted to be made by testament. Besides heirs, there are also legatees, at least under a particular title, and sometimes also under a universal title.

Certain laws, contrary to others, also admit a succession contract.

2. Everywhere an authentic testament, that is, one in which a competent public official, a notary, intervenes, public or mystic, secret, and a private testament, for which a writing made by the proper hand of the testator is required, are distinguished; and in extraordinary circumstances of a spreading plague, navigation, etc., a peculiar form has been foreseen.

3. Hereditary portions and legacies can be made subject to various clauses and conditions. It must be seen what the positive laws establish concerning their force and efficacy. Impossible conditions are often held as not written. It must be observed especially how far the testator can, not only for the case in which the one first instituted has failed by death or another cause or has not accepted, substitute another (vulgar substitution), but can also impose on the one first instituted the obligation of preserving the goods until death and then of leaving the same to another (fideicommissary substitution); or by secret mandate impose on the heir or legatee the burden of handing over to another, or of applying to a certain end, all the legacies or part of them (fiduciary substitution).

4. Full capacity of making a testament is most often denied to minors by birth; yet partial capacity, for example concerning half a part, or a testament of public form, is often customarily conceded earlier.

5. Execution of a testament can be committed to the person whom the testator has designated; but per se it is incumbent on the heir.

6. In the canonical forum, dispositions made for pious causes by a person who by natural and ecclesiastical law can freely establish concerning his goods are firm. But for validity in the external forum, canonical proof is required and suffices. Executors of a testament for pious

causes must render to the Ordinary an account of the fulfilled office; for he is the executor of all pious wills (c. 1515).

7. **In the forum of conscience:** a) both commutative justice and piety and charity can obligate someone to make a testament. In making the testament itself, the norms of those virtues are to be observed. - b) A testament is called inofficious by which the testator has made legacies from his goods beyond the portion concerning which, according to the law, he was able to dispose. Those who make such a testament are not unjust; yet they can harm another virtue. Goods which someone has had from an inofficious donation or testament he can preserve; nevertheless, they are to be returned to the heir claiming them, even if the donation or legacy was made for pious causes. A sworn promise not to revoke a testament begets no obligation of justice, but at most one of religion. Yet, by force of c. 1513, an irrevocable disposition concerning one's inheritance which has been made for pious causes is valid. - c) The interpretation of a testament is to be made according to the reasonable will of the testator; but its execution must be made within the time defined by law and usages. A designation made of a pious cause is presumed to have been made demonstratively, not taxatively. - d) A civilly inform testament confers on the legatee a sufficient title why he can preserve the accepted legacy and need not warn the heir about the defect of the testament; but it does not suffice that the heir must execute profane dispositions, or that occult compensation be permitted to the legatee. Yet by a promise of executing the expressed will of the testator, even without legal solemnity, the heir is held by a title which must be prudently gathered from his mind and from the circumstances. But if a testament or legacy has been made for pious causes and in canonical form by a person canonically capable, it must be executed. For this it is enough that, by recognition of the testator's hand or by the testimony of two witnesses, one witness, even an excellent one, not sufficing, or by a declaration directly made to himself, the burdened person is truly certain concerning the will of the deceased. Wherefore even from fideicommissary substitution, a pious cause can suffer no detriment.

Section III: On Injustice and the Connected Obligation of Restitution

Order of the Section. - As many as there are kinds of justice, so many are the opposed kinds of injustice. These must be treated in order. Therefore we shall assign two shorter titles to the injustice which is opposed to legal justice and to distributive justice; but we shall reserve the third title for violations of commutative justice and their consequences.

Title I: On Injustice Opposed to Legal Justice

Usefulness. - In this title chiefly the error must be set aside which, having followed the "individualism" of the nineteenth century, almost dispenses citizens from offices toward the republic; and a right estimation concerning the obligation of taxes must be acquired by us.

In our work we have abstained from the name of social justice, lest we increase the confusion under which not a few labor, who practically equate legal justice with a particular virtue. For while for some social justice is the same as legal justice, others, by that word, better call together the complex of virtues which come into use in society.

Nature and Accusation of Sins. Every sin contains a material violation of legal justice. For every sin is forbidden by law at least divine. Yet that malice regularly is not to be declared, both because, when the sin has been indicated, it is already sufficiently understood, and because for the most part it will not be formal. For this requires an action done from contempt of the common good, which therefore is opposed to legal justice by a formal reason and, as such, is to be indicated. Since that virtue lacks a special matter, a material violation is not specified by it. Acts specially harmful to the common good, for example betrayal of the fatherland, will have to be indicated as such, as gravely opposed to piety and charity.

On Taxes to Be Paid. 1. In difficult circumstances of the republic, it belongs to a good citizen that he bring aid to his city even by monies liberally offered. How much more will he pay just taxes, according to his proportionate part, to the ruling treasury! Wherefore this rule must always be inculcated, that taxes be contributed according to the sufficiently general usage of upright persons; and today not a few republics labor under such manifest need that a reasonable contribution does not seem able to be denied without sin against piety. Yet, considering the quantity which could be subtracted, and considering the pecuniary penalties by which frauds are punished, grave sin will rarely be certain; but we do not deny that one can sin gravely.

2. But from the common opinion, there is no obligation of conscience positively to declare things subject to tax. Wherefore commutative justice is not violated by those who, in making instruments of sales, indicate a price below the true one, or do not manifest all movable goods which pertain to the inheritance. And where this practice has sufficiently prevailed, not even truth is offended by that lesser declaration. Yet he who uses false certificates of physicians, etc., to increase the debts of an inheritance, will be guilty of a lie. Moreover, observe that a notary has not been constituted to protect the rights of the treasury, so that, with justice uninjured, he can be a participant in fraud. But if an oath is requested, religion itself per se will oblige that you respond sincerely according to the just mind of the one asking.

Wherefore where an oath is requested merely to protect the rights of heirs, not at all to protect the rights of the public treasury, it can be sworn that nothing has been concealed by him who was conscious of no thing iniquitously concealed, so that the rights of the heirs have remained intact.

But if a sworn declaration is requested for the utility of the treasury, that obligation, today sufficiently odious, nevertheless cannot tend to this, that from it religious men be compelled to bear an unequal

burden of taxes. Wherefore according to the reasonable mind of the one asking, and therefore without perjury, he will have responded who, under oath, declares accurate indications which have been made according to received usages.

3. Moreover, before the proportionate part to be paid by each has been defined by the officials set over this, no right seems to have been acquired for the treasury.
4. When that definition has been made, the question concerning the obligation of justice of paying just taxes is probably controverted. Certainly power is not lacking to the civil prince to oblige citizens to pay the just part of taxes. But already before our age, to many the mind of the legislator seemed to be no other than that of fining detected defrauders. Today the intention of obliging conscience becomes less probable. Therefore, unless the general persuasion of the region is different, and this must be trusted, we shall deny a strict obligation of justice. Yet those will violate justice who use unjust means.

Nor can those be excused who wish to exercise fraud as an art: both because, from the intention of using force against officials, they bear a mind contrary to justice; and because they expose themselves to dangers of ruin and penalties, and thus offend charity toward themselves and their family.

5. But those who, by corrupting officials set over taxes, have obtained immunity for themselves, are formal accomplices of those officials who violate the duties of their office, so that they are guilty of injury against the republic. Just taxes are supposed.
6. But insofar as by withdrawing their goods from the treasury they are an indirect cause why others are burdened more, they commit no injustice toward those persons: neither commutative nor distributive. Not commutative, because the greater burden of others, if any results from this, follows no unjust action toward others. Not distributive, since they do not themselves have the positive care of equal partition.

It is useful to add this. If they could be more secure concerning the reasonable use of public monies, upright and Catholic men would contribute monies more willingly and would act more scrupulously in this matter.

Today, the ease with which theologians excuse tax frauds from sin is not rarely presented as scandalous. But of what kind is that scandal: of the little ones, or Pharisaic? Let them observe first that by Catholic theologians those arts are condemned as strict injustice by which those who conduct purchases and agreements for the city assign to themselves part of the public monies; and every dilapidation of the common patrimony; indeed, already the very sloth by which public offices are conducted without true solicitude for the common utility; so that, if heed were paid to moral theology, the treasury would gain many more monies than it loses on account of the benignity of theologians. If besides you weigh the unjust place into which, in more than one state, Catholics are thrust down, so that they are in great part excluded from public offices, and that full liberty of conscience of living according to the precepts of the Catholic religion is denied to them, which is offered so liberally and rashly to the haters and disturbers of social peace; if you consider in your mind the laws which Catholics must tolerate, by which, for example, public monies, and therefore monies contributed by Catholics themselves, are destined for the scholastic propagation of irreligion:

with what face will men who are witnesses, and perhaps authors, of such abuses accuse theologians of excessive indulgence, and demand that for laws often unjust, obligations of conscience be urged which they themselves generally repudiate?

— Yet to the State which exercises the business of transporting letters, goods, persons, a just price from commutative justice is owed by those who, for example by taking an ordinary place, tacitly enter with it into a contract of carriage. A just price, I say, not that which it seeks beyond this on account of monopoly, as it is accustomed to do in selling tobacco, etc.; that is to be paid as a tax.

Nor will he be accused of injustice who, contrary to "postal" laws, enclosed in customary letters certain things forbidden or specially to be taxed, nor he who, after paying the price of an inferior class, should make a journey in a coach of a superior class. For provided that the lowest price of carriage or journey is paid, those accidental frauds are judged to be urged only by penalties. Except if someone has used an unjust means. Cf. Prummer, II, 85.

On Military Service. The obligation of military service has the true nature of a tax. The laws by which it is imposed are commonly held as penal, the more so because they seem to recede sufficiently from the equality of justice. Where those are designated by lot who must earn stipends, those who by fraud evade service do not violate commutative justice, even if by accident, from the disposition of law, another must be substituted. For they are prohibited by no right of this person from taking thought for themselves. He who by agreement has obligated himself to occupy the place of another in the camps, if he has fled, per se is held for the whole damage which from this is suffered by those with whom he has agreed. Yet unforeseen conditions of intolerable cruelties or of very grave spiritual danger can furnish a just cause for deserting military service; and then, with the contract rescinded, only the price in proportion to the time which remains would have to be refunded. Indeed he is freed from this obligation if the other, for whom he is substituted, nevertheless remains exempt, since then he has truly furnished the promised immunity. Similarly, from commutative justice he is held to earn stipends who has bound himself to the State by free enlistment.

But in time of war, those who desert the military station are punished by a graver penalty; nor, in a just war, do they seem to us able to be excused from grave impiety toward the fatherland.

But the very grave penalties by which they would be punished if they returned will easily dispense them from the obligation which they would otherwise have of returning to the camp.

Summary

— 1. The material violation of legal justice which is contained in every sin need not be accused distinctly; the formal violation would have to be: this is committed by him who acted from an intention contrary to the common good. But acts specially harmful to the common good, such as betrayal of the fatherland, are to be noted as such, as gravely opposed to piety and charity.

2. **On Taxes.** By not paying taxes in that way in which they are customarily paid by good citizens, a sin against piety toward the fatherland is easily committed, besides the notion of scandal; yet the sin will rarely be grave, on account of the slight effect of an individual defraudation.

But the legislator, both civil and ecclesiastical, can urge the obligation of conscience by his precept; indeed, he can exact just taxes from commutative justice. Yet a positive obligation of declaring things

liable to tax is generally not admitted; nor is a right judged to have been acquired for the treasury before it has been defined what each must pay. Indeed, when that determination has been made, the obligation of justice is not yet demonstrated. But justice itself forbids that you corrupt public officials; nor do those seem able to be excused from grave sin who wish to exercise fraud as an art.

3. To the State which exercises a business, for example of transporting letters, goods, persons, the just price, not that which besides it exacts in the manner of a tax, must be paid, commutative justice itself wills. Yet accidental frauds of using a coach of a superior class, etc., seem to be punished only by penalties.
4. A law which binds citizens to military service is held as penal. Yet those who, in a just war, desert the military station which had been committed to them gravely offend piety toward the fatherland.

Private persons who, by withdrawing themselves or their goods from the treasury, have been the cause per accidens why others are more burdened, do nothing which is injurious to these.

Title II: On Injustice Opposed to Distributive Justice

Usefulness. - The frequent omission of offices demonstrates how useful it is to recall, even in a few words, the duties in conferring offices and in exacting taxes.

On Acceptance of Persons. One sins by the vice of acceptance of persons when, in the distribution of common goods, in conferring public offices, attention is paid to those conditions of the person which, for the matter at issue, would plainly have to be neglected.

Here offices or public functions properly so called are to be distinguished, which are exercised in their proper name for the common utility by those who hold them; and certain secondary offices, by which officials properly such are merely helped, such as their secretaries or copyists attached to their persons.

1. The former offices today are in the private dominion of no one. They belong to the republic. Therefore in the first place they are to be conferred in that mode which the common good demands; then, with the common good saved, according to the rules of distributive justice. Wherefore strictly they are to be conferred on the more worthy, that is, on him whose nomination, all things considered, will more profit the republic. Although others think it suffices that they be attributed to the worthy: their opinion rests upon an antiquated regime in which all magistrates were judged to represent one Prince, who through others did what he could not do by himself, so that it sufficed for him to procure through others that moderate diligence by which he himself was held in acting. We do not deny extrinsic probability to that opinion.
2. As to the latter offices, it is enough to choose worthy persons, who do not harm the common good and truly merit the public stipends.
3. In either case, those who assume the unworthy where worthy persons are present sin against commutative justice toward the state, and they will have to repair the damages brought from this to the state or to private persons.
4. But no restitution is owed to those who are passed over, unless, from a competition having been announced, the victor acquired a right to nomination.

Moreover it must be noted that competitions can be made in two ways: so that the qualified may be discerned, from among whom then one may be freely chosen by the Superior; or in such a way that a strict right of obtaining the office is assigned to the victor. Only in the latter case is commutative justice violated toward competitors merely passed over. If the one elected is so unworthy that he receives a stipend without cause, that stipend will have to be restored to the republic.

— But by an inequitable distribution of burdens, for example of taxes, commutative justice itself is violated toward private persons; for citizens have a strict right not to be despoiled of their goods beyond what they must contribute.

Summary

— 1. One sins by the vice of acceptance of persons when, in conferring public offices or distributing common goods, attention is paid to those conditions of the person which, for the matter at issue, would plainly have to be neglected.

Today, offices which belong to the republic are, from distributive justice, to be conferred on the more worthy; this canonical law also expressly sanctions concerning parish priests. But secondary offices, by which the principal official is assisted, are to be conferred at least on the worthy.

For the republic has a strict right that, if they are present, worthy persons be assumed, and that public monies not be squandered.

Private persons who have been passed over cannot complain of injustice against commutative justice, unless the competition was announced in that manner which confers a strict right on the victor.

But by an inequitable exaction of taxes, commutative justice itself is violated. For this forbids that citizens be despoiled of their goods.

Title III: On Injustice Opposed to Commutative Justice

Usefulness. - Very grave questions now remain for us to investigate concerning the multiple objects and forms of injuries, concerning their various gravity, and concerning the obligation of restoring what belongs to another which often follows. Since this is said to be the chief part of the tractate on Justice, its usefulness need not be proclaimed. But logically it is placed after the exposition in which we have summarily declared the various rights and their sources, and through that exposition it is more easily and more fully perceived by the intellect.

Order of Treatment. - The title will contain four chapters. In the first we shall treat the general notions concerning injury and restitution; in the second, concerning the principal injurious action; in the third, concerning unjust cooperation; in the fourth, concerning the circumstances and excuses of restitution. The occasion will be at hand for us to propose several things which have usually been handed down in distinct treatises on the various precepts of the Decalogue. Our arrangement seems to assist synthetic notions not a little.

Chapter II: On the Principal Injurious Action

Note. We do not so treat of injuries in this chapter that we pass over in silence connected licit acts. Thus, while we mention forbidden homicide, at the same time we explain the right of bloody defense; beside theft we place the right of necessity; no less than of the possessor in bad faith, we propose to treat of the possessor in good faith. Hence there will also be place in the Appendix for saying a few things on the action of public power and on the right of war.

Article I: On Personal Injuries

Highest General Principle. Private persons, as such, in their mutual relation, are equally inviolable; and this without any consideration of merit or demerit, consent or dissent. Wherefore no malice, no formal or virtual renunciation, can take away or diminish that inviolability. Therefore:

1. No one can assume another person as a means for himself.
2. No evil of neighbor can be intended or chosen by another, but only permitted for a just cause, so that all evils of another which follow, as effects, upon someone's voluntary action, can be excused either in no way or only by the principle of double effect.
3. A conflict of rights, as it is called, cannot arise except concerning rights over a thing and alienable goods, which can be possessed by several and can pass from one person to another.

These things, as it were, dominate the whole present argument.

Yet another perpetual principle, already demonstrated before, remains: no injury is done to one consenting.

The division of personal injuries is from the object. Some injuries touch immaterial goods: supernatural grace, truth, the use of reason, honor, reputation; others harm the body.

§ 1. On Injuries Which Touch Immaterial Goods

I. Injuries Concerning Spiritual Goods

1. He who has induced another to sin by mere persuasion or example, when the other has freely consented, is held only by the office of charity to call him back to a better state; but if he used fraud or fear, he must remove these, must besides indicate suitable remedies, unless the other has sufficiently known these, and must repair other damages, if any have proceeded thence.

II. He who has turned someone away from entrance into the novitiate, or a novice from profession, has not violated justice unless he used force or fraud. If either has intervened, the obligation toward the novice or candidate will return, of which we were just speaking in the preceding case.

> Must the emoluments connected per se with that entrance be restored to the monastery? Some hold this and estimate the damages according to the present hope. But because an action of this kind does not tend of itself to inflicting temporal damage upon an Institute, to which no acquired right in a novice belongs, the obligation can probably be denied. - He who by force

or fraud has abducted a professed religious is held concerning temporal damages toward the Religion. Force and fraud being excluded, since the religious himself does not certainly sin against justice, the obligation of restitution, with Lessius, *Iust.*, c. 8, n. 16-20, against many, seems able to be denied.

II. Injuries Concerning Intellectual Goods

I. He is per se guilty of grave injury who has made an unwilling person drunk, or by the injection of morphine or the use of a similar substance has artificially deprived him of the use of reason, or has filled him with various dreams or phantasms. Cf. what was said I, 478. The damages thence following are to be repaired as far as can be done.

II. He who has taught practical errors must unteach them, and must repair the damages which thence per se have followed for the erring person and for others. But if they were speculative, that is held as venial, unless the error concerns the principal and fundamental dogmas of faith, or the student is defrauded of a great part of the discipline which he wished to learn.

III. Injuries Concerning Liberty

I. A private man is injurious who has prohibited another, by physical force, from free steps or actions; or, morally, by unjust threats has forced him to do or omit certain things; or by fraud has impeded his free choices.

Clerics are protected from these injuries by canonical sanction, that is, by the privilege of the canon. Cf. III, 10.

2. He also is injurious who subjects a non-consenting person, for example by abuse of hypnotism, to his commands. He must from justice restore that person, by suitable means, to his own right.

IV. Injuries Concerning Social Intercourse

— Everyone has the right that, according to his goodness, whether innate or acquired, he be esteemed and treated. That right is violated by contumely, detraction or calumny, and rash judgment. Concerning each of these we must speak briefly.

I. On Contumely. 1. Notions. Contumely is the dishonoring of one's neighbor, or an illicit lesion of the honor of one's neighbor. Honor, however, is a testimony concerning another's excellence or goodness. Some goodness belongs to each one, and there is a right that he not be contemned.

Contumely is negative, by which signs of honor which observance and piety would demand are merely denied; positive, when a lesion of honor is contained either by word (through insults, reproaches, curses), or by writing (through an infamous libel), or by deed (through signs, insulting representations).

Specification and Gravity. The mere omission of signs which are not owed from justice is opposed to piety, observance, charity, but not to justice; but a positive denial which is a virtual dishonoring is opposed to it; and much more an act contrary to the honor of another. And it is mortal by its genus, because it is opposed to a good which is worth more than riches themselves. And it will be mortal in reality when it proceeds from an affection mortally evil, whether of contempt or of hatred, or if a grave dishonoring follows; here the quality both of the sinner and of the person dishonored has very

great force. The place of St. Matthew, "If anyone shall say to his brother, Fool, he will be guilty of hell fire," is explained insofar as an insulting word manifests mortal hatred.

Although the quality of the person harmed, as for instance of a parent, can add a new species, contumely, as such, is the lowest species, since it contains this one formal malice of prejudice done to the honor of neighbor. Thus most hold, although St. Alphonsus, *De Peccatis*, n. 48, judges it more probable that contumelies are to be distinguished from their objects, because a proper honor is to be attributed to individual excellences.

With the mind of correcting, humbling, or for another just reason, a Superior can cast some word, otherwise insulting, at a subject; but let him beware of excess.

For the sake of jest to cast light defects, provided the other is not saddened or moved to anger, pertains to urbanity, according to St. Th. 2, 2, q. 72, art. 2. The insults with which women, children, and men of the lowest lot burden one another are not judged gravely to wound honor, so that they are excused from mortal sin, because faith is not given to them. The same often must be said of insults uttered by an angry man.

Cf. also what was said concerning piety, n. 290.

2. On Restitution for Wounded Honor. It is asked whether, from charity alone or also from justice, some reparation must be made, at least if reputation has remained intact. And Molina, *Iust.*, tr. 4, d. 46, judges that new signs of honor are owed from charity alone. But the contrary sentence is to be preferred, because dishonoring, as such, is damnose. For in the very man who is affected by contumely, courage and confidence in acting are diminished; this is not lightly harmful to him. Besides, in the opinion of others, dignity or the title of honor decreases from contumely, and thus the dishonored man is also damaged in his social life.

Reparation is made through an honorific and friendly greeting, or an invitation to table, or a petition for pardon (sometimes even on bended knees and before witnesses; which can also be done through a mandatary), according as the lesion was grave. If material damages have followed, there is no doubt that these must be repaired. But from the common sense of men, pardon no longer must be sought if the offended man has taken vengeance, by himself or by the judge.

II. On Detraction and Calumny. 1. Notions. a) Detraction, in broader use, is any unjust violation of another's reputation. And, from what was said in n. 580, any direct violation committed by a private person is unjust. Detraction strictly so called is distinguished from calumny. For calumny is committed when a false crime is imputed to someone; detraction, when a true but occult crime is revealed.

In the civil forum of Belgium and France, since public officials cannot act except concerning calumny, while proof of sin or delict against private persons is not admitted, they sometimes distinguish defamation, which is a lesion of the reputation of a private man, and calumny, by which the reputation of an official is harmed.

By the intention of wounding reputation, formal detraction is separated from material detraction.

b) Reputation, however, is opinion or estimation concerning another's excellence. Therefore it is a good which we have among others.

Reputation is distinguished: a) of the moral order, which, founded in the use of free will, freely perishes and can be freely restored. This reputation of honesty, of probity, is reputation simply so called, and is had either as connatural or negative and common, insofar as he who is not proved evil is not reprehended; or as positive, special, acquired by the exercise of virtue; b) of the physical or intellectual order, which, being removed from free will, honors capacity, genius, talent.

Reputation is useful, indeed necessary, so that we may foster easy, dignified, and pleasant intercourse with other men, and so that according to our capacity we may render ourselves useful to others and to society, or may discharge our social function.

It is also very useful to enjoy a good reputation for capacity and talent.

2. The Right of Having Reputation. a) A good which serves so greatly the end of human life is manifestly the object of right. And common utility itself demands that it not perish because of an accidental vice; therefore to take away reputation is at the same time to take away the stimulus of conversion and the occasion of repairing the things committed. Moreover, it is to snatch from someone a good which he still has.

But even in a moral matter no one can lay claim to a positive reputation which is greater than his merits.

Finally, this good is not ended by death; for posthumous reputation also is held in great price, and by the hope of such reputation many are stirred to illustrious deeds.

b) Because reputation is a good distinct from the person, it is in the perfect dominion of man, so that one can validly renounce his own reputation. And for the same cause it is situated in the high dominion of the State, so that social authority can, on account of true but occult delicts, mark and punish someone with infamy. Although it is rather repugnant to the mind of the legislator of today that he affect even a guilty man with perpetual infamy.

3. Moral Estimation of Wounded Reputation. a) **Malice.** Directly to detract from the reputation of someone unwilling is, in a private man, a sin of injustice which participates in the nature of theft, and by its genus is grave, although contumely is judged graver.

But the gravity of detraction is to be estimated less from the defect narrated than from the detriment which is inflicted upon someone's estimation. Wherefore it will often be graver rashly to accuse a secretary of garrulity than of mortal sin.

Nor is it right to detract from the dead.

b) **Specification.** Although calumny is graver than detraction, nevertheless in species the two do not differ, except insofar as calumny is at the same time opposed to truth; but this malice is not mortal. Nor do various detractions seem to differ among themselves in species, because they are opposed to the same reputation. St. Alphonsus, however, L. V (*De Peccato*), n. 48, more probably thinks that the species vary because reputations are distinct according to the object or matter.

c) **Excuse.** He is not unjust who, according to truth, casts someone down from a special reputation of virtue to a common one, or who supplies just notice of the skill or lack of skill of others. For neither had truly acquired or possessed the greater reputation.

Nor is he unjust who, on account of proportionate utility, communicates notice which at the same time harms another's reputation. For often an action which wounds reputation possesses some other utility of this kind. The defamation of another, as the other effect of the notice given, is merely actively permitted. - And more easily a proportionate cause is present for historians, so that concerning facts, especially not recent ones, and concerning men whose reputation now matters less to other living persons, they may speak fully according to the truth, with every consideration of personal reputation removed: both because historical knowledge commonly matters; and because the condemnation of a harmful man very often prepares the restitution of good reputation to an innocent man.

4. Corollaries or Applications. In a place where someone is so unknown that even when present he cannot be designated by anyone by his own name, the person has no reputation. Wherefore calumny uttered against him will have the nature of a lie, but not of unjust detraction.

They do not sin by detraction who, with a view to correction, report the occult defects of children and subjects to parents and Superiors (cf. above, n. 116); - who, for the sake of taking counsel and help, reveal things which necessarily must be communicated; - who by their revelation propose to impede proportionate damage of another: whence, when there is question of conferring an office, of contracting marriage, of undertaking religion, of assuming a physician, preceptor, or servant, it is lawful, indeed sometimes necessary, to manifest the occult impediments, inability, and crimes of another, from which some notable inconvenience is deservedly feared, provided that no other more suitable manner of impeding is at hand, and that the damage feared for the neighbor is not too far below the damage which will follow from the revelation; - who by revelation consult their own reputation unjustly wounded by another; - who, for the sake of solace, communicate to one friend, not to many, an injury done to them by another, especially if care is taken that the person is not named more openly than is necessary for solace; - who manifest a crime public by notoriety of law, that is, concerning which there is certainty by a definitive sentence of a judge, even in other places where reputation was not easily going to arrive. This is done without injustice, because the divulging of the sentence has the nature of a useful penalty, and it is expedient for the public good that criminals be known. Nor is it repugnant to charity, unless you act with a bad intention, or, because of the amendment of the person, the reason of public good has ceased. Indeed, if the matter has only notoriety of fact, the public good seems to demand that men be able to converse about public matters of this kind, and thus avoid errors which would easily flow from false estimation. Thus Lugo, d. 11, n. 61, against others who speak more severely, when the matter is divulged in a place to which reputation was not going to arrive except after a long time. But can the memory of an ancient condemnation be stirred up, with justice preserved? Formerly they admitted this; the matter depends on the mind of the legislator, which we judge to be contrary.

Detraction is only light per se in him who reveals the natural defects of others or general propensities to anger, etc. (lust excepted); or even mortal sins which, because of the condition of the person, wound his reputation only a little, as if you should say of a secular and not very pious youth that he is prodigal, given to loves, etc.; - of him who reveals someone's occult crime to some one prudent and taciturn man, unless the person be one by whom someone specially wishes to be approved. Nor is it an obstacle that the loss of reputation with one person is held grave through rash judgment; because by that judgment a crime is imposed on someone as if falsely, which, in a grave matter, is always

grave; - of him who manifests a crime which shortly will be public, because it harms little, unless, however, grave damages follow from that anticipation; - of him who makes one infamous in one crime, for example adultery, infamous concerning another very related one, as for instance fornication; - of him who speaks of the vice of a people in general, or says of some city that many there are wicked, even determining the crime, insofar as either it is notorious or it harms no determinate person. Indeed, often no sin will be committed by this narration.

But it will be grave, against justice, by narrating even light defects to do grave harm, as if you should say that a Prelate of the best name is accustomed to lies, or is illegitimately born; - or to say of someone that you know something about him by which he is to be affected with great shame; - to reveal to those who do not belong to that community grave matters which are contained within the ambit of a restricted community, such as a chapter, monastery, or religion, especially since the infamation of the religion, order, etc., not rarely follows thence; - to detract from an order or religious state in common, or from a monastery, by saying, for example, that life is lived badly in it, that regular observance is not kept (unless that was notorious), or, while the person is passed over in silence, to indicate the monastery where an occult grave sin was committed; - to detract from some place if infamy redounds, as it were, to individuals: yet today, because all kinds of persons are mixed, this will happen more rarely.

5. Material Detraction Arising from Loquacity. is mortal if it brings grave lesion of neighbor, and this is adverted to. But it can be objectively venial, if it is not received or believed seriously. Likewise they judge it venial to report things heard as heard only, affirming nothing concerning the truth of the matter, but rather signifying one's doubt concerning it, unless, however, grave damage is foreseen as going to follow from the manner of narrating or from the levity of the hearers, who are going to believe and spread it rashly. But when not from the manner of narrating, but from their own levity, the hearers are going to believe, it will be grave against charity alone. Justice itself, however, will be gravely harmed if you report the matter as narrated by a man worthy of faith; for others will then reasonably believe. Cf. Lugo, d. 14, n. 56, 57; St. Alph., l. 3, n. 977.

6. Some Things to Be Noted. a) He who reports a public delict must also, from justice, report the penitence and amendment.

b) According to the condition of the hearers, who may be conscious of similar things or altogether ignorant, revelation of the delict of a community, or of clerics, monastery, or clerical order, can gravely harm or not harm. And the stricter the secret (for example, of confession) by which you are bound, the graver obligation of prudence you are held to. Scandals also are to be avoided.

c) From the grave sadness of another, the narration of a natural defect can become grave against charity. Likewise, charity at least being unharmed, the memory of a deed which has been handed over to oblivion cannot be made, unless the reason of the common good demands it.

They admit that it is right for an accused man, if it contributes to his defense, to reveal the true crimes of witnesses in a criminal trial. And if the witness responds illegitimately, calumny itself will indeed be opposed to truth, but not to justice.

2. Restitution of Reputation. a) Reputation itself must be restored by the detractor, not by his heirs, since a personal obligation follows a personal delict; material damages which have followed become the burden of the patrimony itself.

b) He who narrated a true crime can gradually repair reputation by praise, by honor restored. The use of mental restrictions, which others concede and even command, cannot be approved by us. But the imputation of a false crime must per se be destroyed by open retraction before immediate hearers, and also mediate hearers. Sometimes it will suffice to say that he was wholly deceived and that the matter was otherwise than had been said. Yet generally confessors are content with retraction before the immediate hearers, since another retraction is made most difficult, and the immediate hearers are tacitly invited to correct the error of others. Cf. Lugo, d. 15, n. 15, 16; d'Ann., II, 226; St. Alph., l. 3, n. 991.

He who, led by good faith or probable error, has said something false about another without a formal lie, must correct the error from justice, insofar as he can do this without notable inconvenience to himself. But if the error of the hearers was the cause why the crime said of one person was understood of another, he must at least from charity prevent grave detriment of neighbor without his own damage.

c) The obligation of restitution is excused or ceases: on account of physical or moral impotence; but he who was formally injurious must restore with equal damage to himself; - if the occult crime which was narrated, or another similar one, has become public in another way; - if reputation probably was not harmed, because it is likely that faith was not given by the hearers to one who seemed to speak from anger or passion; - if reputation has been recovered in other ways (yet material damages which have followed must be repaired); - if the matter has been covered by probable oblivion, and it is dangerous to renew the memory of the matter; - if the other has detracted from you and does not wish to restore; - if restitution is condoned. That condonation is licit if the infamy does not redound to others, nor impede the fruits of commonly useful labor.

III. On Rash Judgment. 1. Notions. Judgment is a firm sentence of the mind, or indubitable assent; suspicion is begun assent; doubt is not assent except causally, but is, as it were, a suspension of the mind inclining to neither part.

2. What Things Are Lawful. On account of sufficient indications, no one is prohibited from judging, suspecting, doubting; indeed prudence itself compels this to be done in practical matters. Nor, when we doubt, provided that we abstain from a positive judgment concerning improbity, are we forbidden so to act and dispose matters for greater caution as if the other were unjust. This being excluded, rather we ought in mind to incline toward a good interpretation, and to disregard some falsity if any underlies this favorable judgment, because a contingent particular truth does not pertain to the perfection of the intellect according to itself, and that judgment more regards the good affection of the mind. Cf. 2, 2, q. 60, art. 4, ad 2.

3. The Sin of Rash Judgment. Because reputation is a good which we have among others, rash judgment, with full advertence, concerning a gravely defaming guilt of neighbor, is opposed to justice, and indeed gravely. But that sin will rarely be committed, either because at least probable indications are present, or because the defect of reasons is not adverted to. Almost then it will be committed when, while adverting to the obligation of examining the reasons, one neglects the examination from an evil affection, and delights in the apprehension of another's infamy.

4. What of Suspicion and Doubt. Rash suspicion and doubt seem by their genus to be venial. For since some good estimation of neighbor remains in the mind of the one suspecting, no grave injury is

inflicted on him. Yet grave can be the malevolence on account of which one persists in grave suspicion or in doubt concerning a grave matter. He who, being interrogated, responds that he is not morally certain but can be deceived, does not judge but suspects; but he judges who has affirmed the matter as certain or almost certain.

§ 2. Injuries Against the Body or Temporal Life of Neighbor

Order of Treatment. These injuries are committed through homicide and mutilation, and therefore through feticide; through the duel, through the direct procurement of abortion; through rape and adultery. With homicide the question of bloody defense is connected; with feticide, the question of the ectopic fetus; with abortion, the question of the acceleration of birth is connected. Yet we shall treat of feticide after the duel, and afterwards of abortion.

I. On Homicide and Mutilation

Malice. 1. Direct killing of a man, done by private authority, is intrinsically illicit. Say the same of mutilation, except that which is directed to preserving the body or temporal life. These things are manifestly gathered from the principle placed here above, n. 590, and from what was said in nn. 320-323.

Specification. The consent of the one suffering can remove only the note of injustice, but not the other malices; not even the grave offense against piety, which infects voluntary parricide, spouse-killing, or fratricide. Offenses against piety differ among themselves in gravity, but not in species. Grave cruelty annexed in the execution adds a new species of ferocity. But the means or mode of homicide does not change the species.

Nor can a private man kill a malefactor or a man condemned to death, unless there is question of one legitimately proscribed, whom it is lawful to kill, with a mandate of public authority.

2. Casual homicide, or homicide which follows an action or omission apart from intention, will be imputed insofar as it was foreseen as going to follow from an action which, on account of the danger of such an effect, was prohibited by natural or positive law. It is called mixed casual homicide. The case is that of a cleric who, not excused by necessity, illicitly has practiced medicine with burning or cutting.

— A detriment inflicted upon health, for example the active communication of a grave disease, is referred to mutilation.

> Therefore they sin gravely who hand over a syphilitic infant to a nurse to be suckled. Nor can the utility of the infant, as the other good effect, alone intended, be alleged, both because, in order that another's health be thus disposed of, the consent of the nurse would be required, and she is not even accustomed to be warned; and because another way of feeding the infant is commonly at hand.

On Bloody Defense. 1. It is right to repel force by force, and to anticipate an aggressor who tries to snatch from you life or the things which are necessary for conducting it honorably, even by an action which at the same time inflicts death, with the mind of defending oneself, and with "the moderation of blameless defense" (that is, of licit defense; the classical formula is taken from Roman law, Cod. L.

8, t. 4, c. 1). That moderation is preserved if only that is done which seems necessary for warding off the injury.

2. The reason of honesty is not, as many say, some conflict of rights, for the person of the aggressor remains inviolable; nor by his delict can anyone alienate a right which he cannot lose by consent; but, with St. Thomas, 2, 2, q. 64, art. 7, the principle of double effect must be used (I, 131). For the aggression of another brings it about that acts which otherwise immediately would be only wounding and killing are at the same time immediately one's own defense. Wherefore killing is only permitted, and cannot be intended as such. And to the difficulty moved by Lugo, *Iust.*, d. 10, n. 149, that what is honestly effected is honestly intended, answer is made by conceding the major, but denying the minor: in the case, killing is not properly effected, but permitted.

3. Conditions. The reason given demonstrates: a) that an aggression morally present is required, not one past, for then vengeance would be exercised; not, however, one merely foreseen, for then there is not yet place for defense. But he is morally an aggressor who has determined in mind to attack you, and at the same time seeks the occasion of the aggression.

> What in doubt? If it is confirmed by no exterior action, suspicion can give place to caution, but not to bloody defense. But he who, from the hour or manner in which he presents himself, seems to be feared, must be warned not to approach. If he continues to approach, he will be able to be treated as an unjust aggressor. But if, like a nocturnal thief, whose certain evil intention is already certain, he creates the true danger itself, unless men can be called by a shout, he seems able to be repelled as an aggressor even by death. This sometimes is sanctioned by positive law itself.
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> On account of the danger of hallucinations and abuses, by propositions 17 and 18 condemned by Alexander VII, the killing of a false accuser, of false witnesses, and of a judge from whom an unjust sentence is certainly imminent, is reproved (Denz. 1117, 1118); - by propositions 32 and 33 condemned by Innocent XI, occisive defense for hoped-for goods, or against him who impedes an heir or legatee lest he obtain an inheritance or legacy, is reproved (Denz. 1182, 1183). Those propositions were condemned by Alexander VII at least as scandalous; by Innocent XI at least as scandalous and dangerous in practice.

Because vengeance is not being done, but one's own defense, this can be exercised even against a materially unjust man, for instance a drunkard. Nor are we prohibited from defending another bloodily: for instance, a woman's assailant against chastity. Yet this will not be lawful if she consents, or, when she can, does not resist, unless, on account of connection, it matters to you that her honor be intact. And the bloody defense of another can be commanded by various offices.

b) That a lesion of a proportionate good is required: of life, of mutilation, of chastity, of a temporal thing which in itself or for the harmed person is of great moment. I would estimate the absolute quantity as not below a thousand francs. That regularly one gold coin suffices is proposition 31 condemned by Innocent XI (Denz. 1181); d'Ann., II, 283 (9), placed the absolute quantity at about 400 francs in his own time. But nothing must be given to a thief threatening force. Wherefore aggression against a temporal good will easily be able to be converted into aggression against the person. But let the aggressor impute to himself the danger of eternal salvation.

c) That necessity of defense is required. Whence if the injury can be averted with a lesser damage to the aggressor, it is not lawful to inflict a greater one. Indeed, if you can flee without disgrace, flight is to be chosen. Wherefore it is not lawful to kill a thief if the thing which he takes away can with sufficient certainty be recovered by another way.

You Ask concerning Vengeance. By vengeance, punishments are taken after a perfect injury. This is not lawful for a private person, but is reserved to public power. Yet a certain medicinal punishment, which is done by blows not dangerous, is permitted by a certain epikeia both to a woman who has been attacked, and to all, after small injuries which it would be too troublesome to refer to the judge.

> Wherefore not even of venial sin is a youth to be accused who thus exacts an expeditious but equitable account of a modest injury. Much more will it be lawful for a solicited woman to show her constancy with her hands, so that the other may depart more certainly and not repeat the attempt. Nor is scruple to be had in this matter, nor censure or irregularity to be feared, whoever the solicitor may be. Cf. Lehmkuhl, I, 996, where he also alleges St. John Chrysostom.

Ecclesiastical Penalties. A layman legitimately condemned for homicide is by the law itself excluded from legitimate ecclesiastical acts and from any munus, if he has any in the Church; but a cleric must be degraded (c. 2354, §2). - Those who have perpetrated voluntary homicide, and all cooperating persons, are irregular from delict (c. 985, 4°). - By the notorious delict of homicide done in it, or by an injurious and grave shedding of blood, a church is violated (c. 1172, §1, 1° and 2°).

N. B. Concerning restitution on account of homicide, we shall treat more suitably and more fully after the question of the duel.

II. On the Duel

I. Notions. A duel is a dangerous contest of two or a few, undertaken by agreement, that is, by a preceding pact, with lethal weapons.

Danger either of death or at least of mutilation or grave wounding is required. For if such danger is absent, the exterior action cannot from natural law and taken in itself be called gravely sinful.

Without agreement, an unjust aggression, which indeed can be had, lies outside that deadly institution which the Church intends to abolish by her penalties.

Lethal weapons are required according to the common sentence. Although, as is reported in the Wroclaw case of August 9, 1890, not a few thought it sufficient that the weapons be able to inflict wounds.

Moreover, he who, whether by provocation or by authoritative command, has morally forced someone unwilling to enter upon a contest of this kind, is guilty of formal injury, since the unimpeded right of declining what he is forbidden to do by the very law of nature must be preserved for each one.

> That foolish usage has a superstitious origin. It was referred to the genus of divination, like the ordeals of the Middle Ages, and was a form of tempting God. Wherefore authors treated of the duel where they treated of superstition. Cf. St. Thomas, 2, 2, q. 95, art. 8, ad 3; Sanchez, *Praec. Decal.*, L. II, c. 39.

Duels of today, especially those celebrated among military men, are a demonstration of a strong mind and of one zealous for his own honor; and at the same time a mode of restraining mutual offenses by the fear itself of a duel. As if these things ought or could be sought by illicit means! And the matter came to such an absurdity that criminal law forbade the duel, and at the same time those who did not infringe that law were excluded from the army!

II. Moral Judgment. It is sufficiently plain of itself that a duel, undertaken by private authority, is infected with the intrinsic malice of homicide and suicide.

For some years, especially after the recent war, the fortune, even worldly, of duels has begun to decline. There will be a time when they will wonder how so inept a prejudice could rage so long.

Nor are duelists excused by the evils threatening them from a refused duel, since immunity cannot be sought from an evil act. Cf. the propositions condemned by Benedict XIV in Const. *Detestabilem*, November 10, 1752.

Concerning duels publicly commanded, it will be said below, n. 638. 2 b.

You Ask. whether into the place of single combat some dangerous attempt can be substituted by which one may show himself a despiser of danger.

Resp. If that attempt at the same time has another, proportionate utility, one will be able to use the occasion of demonstrating constancy of mind. But proof of virtue through rashness as such cannot be elicited.

III. Ecclesiastical Penalties. 1. The duel is punished by excommunication simply reserved to the Roman Pontiff, which, from c. 2351, §1, strikes by the fact itself "those perpetrating a duel, or simply provoking to it, or accepting it, or furnishing any assistance or favor, and also those deliberately watching it and permitting it or, insofar as it is in them, not prohibiting it, of whatever dignity they may be." These words are almost identical with the words of the censure previously laid down in Const. *Apostolicae Sedis*, so that they must receive the same interpretation (cf. c. 6, 2°).

Therefore: The duel which is struck by censure supposes, according to the probable sentence, the agreement of place, time, and weapons. - Wherefore they escape the censure who, when an unforeseen conflict has arisen, from the same impulse of the quarrel go on equal terms to some suitable place in order to fight (S. C. October 15, 1711). But a duel to the first shedding of blood, or one which is finished by a certain number of blows, is struck, unless in reality, on account of precautions taken, the moral danger of a grave wound is absent. - Those perpetrating, provoking, accepting, are principally punished; wherefore those provoking and accepting are struck by the censure even if no fight has followed, provided the provocation or acceptance was not fictitious, but true, and they determine place, time, weapons, or accept these to be chosen by the adversary.

Accomplices, on the contrary, are struck secondarily. Wherefore it is necessary that the principal fact have happened, which, if there is question of spectators, cannot be unless the duel itself. Witnesses, seconds, etc., and also physicians and confessors furnish assistance or favor if, asked by the duelists, they are present even with the intention of shortening the fight, or curing wounds, or absolving. But not teachers of weapons, who merely teach the art of fighting to those by whom it has been determined to fight, nor drivers who carry duelists to

the place of the fight, if thence the fight has not been made easier or more certain. - Deliberately watching are only those who by their presence add courage to the fighters or splendor to the fight and thus continue condemnable prejudices. - Permitting and not prohibiting are not private persons but public powers, civil or military, which either give positive license or, when they can, by no means impede the duel. - Of whatever dignity they may be: today from c. 2227, all persons, if you except only Cardinals, are affected by pontifical excommunications latae sententiae.

2. "Those dead in a duel or from a wound received thence" are deprived of ecclesiastical burial, and consequently of an exequial Mass and public funeral offices. But today, contrary to what was before the Code, this penalty ceases if, before death, they have given some sign of penitence (cc. 1240, 1241).

3. Duelists and their seconds are by the fact itself infamous (c. 2351, §2), and therefore are irregular from defect, incapable of benefices, etc., of legitimate acts, of the exercise of an ecclesiastical right or munus, and to be kept from ministry (cc. 984, 5°; 2293; 2294). But if homicide has been committed, they are besides irregular from delict (c. 985, 4°).

You Ask. whether duels which are called "American" are struck by ecclesiastical penalties.

They amount to this, that both adversaries expose themselves to the danger of death or of grave damage, whence one by chance perishes, the other by chance escapes unharmed: as if, of two lozenges, one is harmless, the other infected with poison, and both must consume one or the other.

Resp. Since they have no appearance of a fight, those duels are not affected by those penalties.

You Ask. concerning the so-called "measures" of youths who frequent the universities of Germany.

Those "measures" consist in this, that, well protected in the principal parts of the body, both youths attack one another with a certain small knife and strive to cut the face. The permanent trace of the wound then received is exhibited as something honorific and glorious.

When questioned by the Bishop of Wroclaw, the S. Congregation of the Council, on August 9, 1890, responded that those dueling in this way and their seconds become irregular from infamy of law.

The same S. Congregation declared to the Bishop of Regensburg, on February 10, 1923, that this resolution still stands, and he had at the same time alleged the scandals of a more benign sentence (A. A. S. XV (1923) 151; *Per.* XII, 51). Others present this declaration as extensive, given on account of the special circumstances of Germany, while others distinguish light "measures" from graver ones. They judge that only the graver ones, in which a probable danger of mutilation or of a grave wound is really had, are subject to the response. However the matter may be, one must strive for the complete suppression of all barbarity.

III. On Restitution on Account of Homicide or Wounding

— In a matter which is not free from difficulty, it will be better first to report the things which are altogether certain.

Principle. An unjust killer or mutilator directly touches the very person whom he kills, wounds, etc., and, if he was a father of a family, also the per se cause of the support of the family properly so called:

of wife and children. Hence he is per se injurious principally to the wounded man himself, and secondarily to his family. Hence various corollaries.

1. Nothing is owed from justice, on account of killing or wounding in a duel, unless the victor forced the other by force or threats to fight: no injury is done to one consenting.

Authors, after Lugo, d. 11, n. 66 ff., and St. Alphonsus, l. III, n. 638, obligate the challenger to repairing damages for the challenged man who was forced by common human respect to accept the duel. Yet against this obligation it can be objected: a) that the provocation itself is often commanded by the same human respect; b) that the cause of coercion in the proposed case is not the challenger himself but worldly prejudices. The challenger by his provocation gave occasion to human fear, but did not excite it. Cf. Noldin, II, 468, 6.

2. According to the common sentence, nothing is owed from justice if, before death, the wounded man remitted everything. For since the support of the family was not furnished except by the father willing it, the injury is not judged to have been done to the family in its goods except insofar as this lesion is repugnant to the will of the father. Yet a judicial action for obtaining compensation is not destroyed by this renunciation of the deceased.
3. These cases being excluded, by reason of the wounded or killed man himself, there is owed to him or to his heirs: a) for the body itself harmed, only that which the judge has defined; b) compensation of the foreseen spiritual damage, through suffrages and Masses of which, by the act of the killer, the victim was deprived; c) compensation of temporal damage: expenses for sickness; emergent damage or cessant profit from inability for work. - Funeral expenses per se are not to be restored, unless thence they have become greater than they otherwise would have been. - On account of the difficulty of estimation, a composition must be entered upon with those having the right.
4. To the wife and children, per se, only the support of which they are deprived through that death is certainly to be restored. Therefore if other goods are at hand for the family, if the widow has married well, nothing now will certainly be owed. For, in other respects, the killing is not injurious to the family.
5. Since a debtor is not the thing of creditors, his killing is not injurious to them: wherefore it is not certain that anything is owed to them. Nor does anything seem to be owed to a society which has insured the life, because with respect to the insuring society, the killer was not bound from justice to abstain from killing.
6. But if the killer wished directly to harm the creditors or the society, not a few then obligate him to make good the damage which they have suffered.
7. He who, unjustly attacked, has exceeded the moderation of blameless defense, will rarely be held to making any restitution on account of the damages thence following, both because the attacker himself voluntarily went into and accepted such danger, and because the one attacked usually committed the excess without full deliberation. Cf. Piscetta-Gennaro, III, 498.

Fuller Exposition of the Matter. "The resolution of this question is difficult on account of the arguments which can be made from every side, to which satisfaction cannot so easily be given" (Lugo,

Iust., d. 11, n. 73).

1. Three Things Chiefly Are Asked.

a) Because, besides material damages of the economic order, homicide is also accustomed to bring detriments of the moral and superior order, authors on this occasion introduce the question concerning the obligation of compensating these latter detriments with money. This controversial question has already been solved negatively by us above, n. 587.

b) What real damages, and for whom, must be repaired by the homicide?

c) Does the universal condonation which, before death, the wounded man made, avail to take away fully every debt of justice?

2. On Material Damages to Be Repaired. a) Let us state the principles of solution. Homicide can be damnose to the killed man himself, before death; then to the family, heirs, and connected persons; then to many others, for example creditors, the poor, and pious works.

Whatever temporal damages, at least foreseen in a confused way, happened before death to the person killed, confer on him an active right, which enters his patrimony and, after his death, comes to the heirs and legatees like any other rights. Concerning this right and its transfer to successors, no doubt can or does arise.

Yet homicide is not injurious to the poor, to pious works, to creditors, nor to the family itself, except insofar as it wounds its right of sustenance to be obtained from the deceased. For the deceased was not the thing or slave of the poor or creditors, nor was he bound to live for their sake. Nor was he the thing of the family. Yet he was bound by a strict office of piety to support certain persons intimately connected to him, so that, if need should be, those persons would be permitted to seek that sustenance for themselves secretly from his patrimony. But the abundance of food which thus from the strict office of piety is owed to the family cannot be taken away without injury committed against it. Just as one who snatched a tutor from a ward would be injurious to the ward, so he who deprives a family of the natural provider of support violates the rights of the family damnously: which damage must be compensated to it. These things having been posited, we have whence we may understand and judge the various sentences.

b) **Various Sentences.** a) All material detriments, at least foreseen in a confused way, must be compensated to all who suffer them. Lugo (d. 11, n. 75) judges this sentence of several older authors and also of Vasquez (*Restitutio*, § 3, dub. 7) to be rather practically impossible than speculatively false. It is rejected by us because the first condition of restitution to be made is lacking: an action unjust to him who suffers the damage.

β) Many hold, and St. Alphonsus, L. 3, n. 631, has as certain, the sentence which obligates the homicide to restoring to necessary heirs and also to the wife all the profit which they would have made from the deceased surviving, according to a reasonable estimation of present hope. The reason brought forward is that that damage follows per se (Noldin, *De praeceptis*, 466), and that heirs have a right not to be cast down from this hope through homicide. But it would have to be demonstrated that homicide is unjust with respect to those persons, not only insofar as it takes away from them the author of owed support, but also the giver of an undue benefit. Since this is not proved, the proximity

of the damage cannot beget the obligation of restitution. This is indirectly confirmed by the things which are had against the exception "per accidens" in Lugo, d. 11, n. 78.

Thinking this, Lehmkuhl, I, 1179, appeals to the absolute will by which the deceased intended to confer on those persons all the profit which, living, he would have obtained. That is, those persons would receive that emolument from the succession of the deceased. But this reason supposes that a right to those profits exists in the patrimony of the deceased to whom they succeed. Now, however, as Lessius observes, *Iust.*, c. 9, n. 155, and after him Lugo, l. c., n. 78, the killed man never had a right to that restitution, "as one whose obligation arose after his death." Or otherwise, cessant profit now belongs to no one, and therefore is owed to no one for the time in which he exchanged temporal things for eternal.

Wherefore we rather adhere to those who circumscribe the obligation of restitution to owed support, insofar as those strictly connected persons are deprived of it through the death of the father or husband. Nor can the accidental will by which the deceased in fact intended to provide for another beloved person confer on this person a right to support.

We also observe that even the best authors speak rather confusedly concerning the quantity to be restored to necessary heirs. For while before they defined the quantity by every hoped-for emolument, afterwards, when they speak of causes excusing from this restitution, they bring forward things whence you would say that only support was owed. Cf. already Lugo, d. 11, nn. 87, 88; St. Alphonsus, l. III, n. 631; Noldin, II, 466, 2; Tanquerey, III, 566.

γ) When there is question of more remote heirs and of creditors, the opinion becomes more common which denies that anything is to be restored to them, whether because that damage follows per accidens, a reason which, being obscure, proves little if in fact the killer knew the consequence; - or because there is no certainty concerning the absolute will of the deceased (thus Lehmkuhl, I, 1180); - or, and this is our reason, because those emoluments are not in the patrimony of the deceased; and, as Lehmkuhl says, I, 1181, concerning creditors, "they have an action against the debtor and his things as long as he lives; they do not have a right that he continue to live."

δ) Not a few respond more severely if the homicide wished to harm creditors, because then, thus Lehmkuhl, I, 1180, that intention demonstrates foresight and attention to the nexus of causality. But, as Piscetta-Gennaro observe, III, 495, intention does not convert occasion into cause; that is, it cannot make an external action unjust. We did not deny the nexus of causality, but the causality is not demonstrated to have been unjust to the creditors.

Nor, contrary to what Piscetta-Gennaro think, III, 491, does it matter with what will the deceased was disposed, who perhaps can be considered as already paying, because by that will the deceased cannot acquire posthumous emoluments.

3. On the Efficacy of Condonation. Lugo, d. 11, n. 63, denies, with several, that the support owed to wife and children could have been condoned by the killed man, since these belong directly to those persons. But they do not belong to them unless the deceased was in reality furnishing that support, and therefore willed to furnish it. Wherefore with Lehmkuhl, I, 1181, and others, we judge that all things could validly have been remitted.

But do not confuse the condonation of injury as such with the remission of the debt of justice consequent upon it.

Heirs also preserve the action in the external forum which the civil law has attributed to them. But if a criminal action is instituted, and they do not use the faculty of seeking pecuniary compensation, the remission of that debt can rather easily be gathered thence, at least from a certain contempt. Thus it happens not rarely that a certain very modest sum of money, for example of one franc, is sought to affirm a right which, however, the party does not wish to use.

— To the society which perhaps has insured the life of the person killed; to the State or institution which, on account of that homicide, must pay a pension to the children or widow, nothing seems to have to be restored. For the action was not injurious to them. Nor does the response seem to have to be changed if the crime was committed with the intention of obligating the society or the State to pay those monies. For intention can indeed remove the excuse which is sometimes sought from an effect too distant; but it cannot make unjust an exterior action which is not opposed to objective right.

> Noldin, II, 466, rather argues from this, that the public treasury and the insurance society perhaps do not urge the obligation of repairing the damage inflicted upon themselves: "for concerning cases of this kind, even if foreseen, nothing is provided in their statutes." That reason seems to us of little efficacy. For another's right which arises from a delict must be satisfied spontaneously, unless positive condonation can be presumed; but no indication of this is demonstrated.

But if someone should have wished, by the death of the insured person, to obtain for himself the promised money, from the contract itself he has no title for obtaining it.

IV. On Feticide

Principle. From the time when the rational soul has been infused, the fetus, even in the womb of the mother, is a person distinct from the mother and equally inviolable. Therefore in no way can it be said to belong to the viscera of the mother, concerning which she may reasonably determine what she wishes. Nor less are the calculations of certain persons to be repudiated, who, comparing the utilities of both lives, that of the mother and that of the offspring to be born, strive excellently to gather which life in the conflict, as they say, is to be immolated.

Corollary. To exercise embryotomy upon a fetus certainly or probably living (by which, either by the head being broken or by the body being cut, it is killed) is never lawful. The contrary sentence cannot safely be taught from the Holy Office, May 28, 1884, and August 19, 1889. For that action is a certain or probable (by probability of fact) homicide of an innocent, which cannot be intended even as a means to the greatest good. Nor is it an obstacle that the loss of life would be slight, because it is never right directly to shorten life, even in the dying. Nor can the fetus which is naturally developed in its own place be held as a materially unjust aggressor.

> **Grave Doubt.** In cases where the safety of the mother altogether requires that the fetus be expelled, and, on account of the narrowness of the opening, it cannot be expelled except by embryotomy, Catholic physicians were accustomed to wait for the moment at which, taught by the stethoscope, they judged the infant dead, so that then, without fault, they might cut its body into parts or bore through the head. But since a recently spread opinion concerning many

cases in which death is only apparent seems to defer certainty of death in such a case at least for an hour; since it also happens that in the case of suffocation, artificial respiration seems, as it were, to restore life to those whose heart was already not beating, it is asked whether or not it is lawful for the physician to exercise embryotomy as soon as the heart has now ceased from beatings.

Certainly, if the case tolerated delay, one would have to wait longer. But in the present case the delay would be lethal for the mother. Again, no positive probability is present by which we could say of such an infant: "probably he lives." But the experiment of artificial respiration cannot be attempted.

Therefore, since we cannot be directed by a mere possibility, and the necessity of the mother urges, will there not be someone who judges it lawful that, content with the sign of which there is an abundance, the surgeon hold the infant as dead and treat it as such? We had in mind to propose the doubt rather than to resolve it.

Ferreres, I, 501, II, end, would permit the matter without hesitation, since he thinks the certain right of the mother is to be preferred to the right, as he says, doubtful, of a fetus probably or more probably dead; and Prummer, II, 136, where he has these words: "Sometimes, however, the fetus is not certainly dead, but more probably now does not live. Then also several authors rightly teach that craniotomy is lawful for saving the mother, because a living mother is not bound to give her life for a fetus more probably now dead." Yet rather than there being question of life to be given for the fetus, there is question in the case of conserving one's own life with the death of the offspring if this offspring is living, as is sufficiently probable.

Tolerance of Good Faith. In various words, authors warn that it is to be permitted to the prudence of priests that, in extreme cases which, alas! occur, they not disturb the good faith of the surgeon. For when otherwise the death of the mother is imminent, and the eternal salvation of the fetus has probably been consulted by baptism at least in the womb, the dishonesty of an action which, by suppressing a fetus certainly going to die, saves the mother, is not so evident that it has not been denied or recalled into doubt by certain highest moral theologians, such as C. d'Ann. (II, 284) and Ballerini (Ball.-Gury, I, 403, note 13). And observe that in the present danger of death, abortion would be attempted too late, so that then there can be question only of craniotomy or embryotomy.

Concerning this tolerance of good faith, cf. Lehmkuhl, I, 1002; Noldin, II, 340; Prummer, II, 136; Gennari, *Cons. mor.*, T. I, Cons. 77, where he proves these things from Kenrick, *Theol. mor.*, I, 130: "if the surgeon asks what is lawful, let him answer: 'I do not know how the life of the fetus can be taken away without fault'" (and therefore with mention of the resolutions of the Holy See omitted). If the mother asks what is to be done by her, it seems it must be said that she ought to ask the surgeon to consult the life of the fetus in every way he can.

V. On Abortion

Notions. 1. Definition. Abortion is defined as the ejection of an immature fetus, or of one which cannot yet live outside the mother; while acceleration of birth, theologically, is the premature expulsion of a fetus which nevertheless can now be brought forth viable. For physicians, abortion is

rather the ejection of a fetus not yet formed, whence they understand acceleration of birth more broadly, even of the expulsion of an immature fetus.

> Regularly, that a viable fetus may be brought into light, it must be contained in the body of the mother for at least seven months; nor is it expelled before 34 weeks without special danger.
>
> Now, however, by the help of a certain special incubation, some six-month fetuses can be preserved.

2. When the Rational Soul Is Infused. The fertilized little egg morally begins at once to live physiologically for itself. Yet do not thence conclude with several writers of the nineteenth century that immediately also, or from the first moment, the rational soul is infused by God. That immediate infusion of the rational soul, as Prummer, II, 138, notes, cannot be proved by any solid argument. On the contrary, right philosophical teachings concerning the soul, the form of the body, demand, with a miracle excluded, such as followed the conception of Christ, that with St. Thomas, *Summa theol.*, 1 p., q. 76, art. 3, ad 3; q. 118, art. 2, ad 2, and all scholastics, after several Fathers, we hold that this infusion is delayed for some time; and this is confirmed by more recent observations of physiology, entirely different, of course, from those which were admitted in the age of St. Thomas.

Cf. our *De Castitate*, 3rd ed. Nevertheless, immediate infusion of the spiritual soul remains sufficiently probable that, theologically, the fetus from the first instant must be baptized and treated as a man.

3. What Abortion Is Materially. Observe also that voluntary abortion cannot be described as an action by which the mother ceases to carry the infant otherwise unharmed, and, as it were, places him outside her womb, in a place where, however, with respiration lacking, he cannot live; but "first and per se the living fetus itself is attacked in the same way in which someone whom another pierces with a lethal wound is attacked. For violently to rupture the membranes and the ligaments by which the fetus has grown together with the maternal uterus is in reality nothing other than to inflict a lethal wound upon the fetus" (Lehmkuhl, I, 1008); "it deprives the fetus of the office of the placenta by which he adheres to the mother and receives nourishment and purification of the blood" (Aertnijs-Damen, I, 571).

4. Baptism in the Womb. Not long ago an instrument was invented by which the membranes by which the fetus is covered are so cut that water can be injected by means of a little tube, and in the very womb of the mother a probable baptism can be conferred upon the infant.

5. Medical Causes of Abortion are of three kinds. For either: a) the mother labors under a disease by which she will be cured with more difficulty, or not at all, unless pregnancy is suppressed. An example is pulmonary phthisis; b) or the gestation itself of the uterus brings disease with it. Inexsuperable vomiting is reported as the worst; c) or, on account of the narrowness of the opening, the mother cannot bring forth the mature fetus. This difficulty can not rarely be met either by Caesarean section (cf. 625) or by symphysiotomy. By this latter operation, the fibro-cartilage by which both bones of the pubis are joined is cut; after that cutting has been performed, the opening of the pelvis can be dilated by one or two centimeters.

Moral Judgment. Directly to procure abortion is held as equally illicit as feticide. Thus the classical doctors think; if any seemed to admit an exception, they supposed that the fetus was not yet animated. Thus St. Alph., l. 3, n. 394; thus most more recent authors; thus the Holy Office, which

assimilated abortion to an operation directly occisive, which, in any case, it declared could not safely be taught to be lawful, August 19, 1889. Cf. response of July 24, 1895; for example, *Analecta Ecclesiastica*, III, 483. Concerning the force of the formula "cannot safely be taught," cf. Gennari, *Cons. mor.*, t. I, cons. 77, in which he cites Bucceroni. For to expel an immature fetus, who will not be brought forth viable, is to inflict a lethal wound upon him. But he who has brought upon a man the proximate cause of death contracts the malice of homicide. And even if the fetus is not yet animated by a rational soul, it cannot be directly expelled without contracting a malice similar in genus, but graver in degree, than that which is in pollution or the onanistic use of marriage. For in each case, even if bodily safety is to be procured, a faculty which has been conferred on us immediately on account of the good of the species is directed, in an order inverted from the species, to a singular good. Therefore it is a sin against nature.

Not a few writers, for example Lehmkuhl, I, 1003, condemn direct abortion of a fetus not yet animated by this reason alone, that it is "anticipated homicide." We confess that it is not distinctly grasped by us what force is in that reason. For how is a man killed before he exists? Nor is there any right of a future man. Wherefore by that form of argument the proper malice of that abortion is not declared, unless you add with Aertnijs-Damen, I, 576, that it, more than pollution, is opposed to nature, and thus suggest the reason just given by us.

Before the last responses of the Holy See, some authors otherwise approved, such as Ball.-Palm., II, 910 ff., and Lehmkuhl, I, 818, though not after the seventh edition, in certain most grave cases thought more benignly: either that by the intention of saving the mother the direct nature of abortion was removed, or that the mother could, as it were, cease from conserving the fetus. But since the safety of the mother follows abortion and is obtained through it, an intention of this kind does not remove the direct procurement of abortion; and the mother does not merely cease from conserving the fetus, but by a positive and often difficult effort expels it. It will indeed be able to happen that in an extreme case good faith is not to be disturbed much, yet with insistence that they apply themselves to those operations which preserve the mother and the offspring together, and that they bear solicitous care concerning the eternal salvation of the offspring.

Observe also that for saving the mother in an extreme case there would rather be need, if it were lawful, of craniotomy than of abortion, which, in the present danger of death, would be attempted too late.

Because men of our age are persuaded less by philosophical reasons than by practical ones, it is opportune to show them how the severity of the Holy See spares several human lives, far from being the cause, even per accidens, why more perish. For if, to save the temporal life of the mother, you should say that killing the infant is lawful, this will be exercised even on account of a probable necessity, nor will all things be attempted with the same solicitude for saving both lives. And note that no worldly reprehension will be incurred by a physician who, alleging necessity, kills an infant who could have been saved with the mother; while if the mother dies in a dangerous birth, this death will easily be imputed to the more prudent physician. Therefore by the very utility of his own reputation, the physician will be impelled to follow the safer parts against the fetus, thus immolating many who could have lived with the mother. Experience itself clearly confirms this. Add also that from one excusing cause men are

led to admitting others: it is enough to read academic reports to see how broad a field some wish already to lie open to feticide and abortion.

— It will be lawful to accelerate birth whenever, by this reason, better provision is made for the very life of the infant. But that it be done on account of the safety of the mother, it is necessary that it be performed "at that time and in those ways by which, from things ordinarily happening, provision is made for the lives of the mother and the fetus" (Holy Office, May 4, 1898, ad II). The reason is that the will of the infant, where there is question of the danger of his life, cannot be supplied by the parents except so that provision is made for his good and utility; by no means, however, contrary to what Lehmkuhl, I, 1007, judges, so that there be made an act even of indirect immolation of life, which an adult could make from heroic charity. Yet this can be understood somewhat more broadly, because the mother herself is necessary to the infant.

On Caesarean Section. Caesarean section is an incision of the abdomen and uterus of the mother performed for extracting the fetus. Thus, immediately after the death of the mother, Caesarean section will be licit, indeed per se obligatory, for extracting even an immature fetus, who thus is snatched from equally certain and more prompt death and will be able to be baptized. Here again worldly prejudices stand in the way of eternal salvation; and those who were preaching abortion for saving the temporal life of the mother will condemn the cutting open of the dead mother for procuring eternal beatitude for the infant. On account of penal laws today, the priest will be able only to warn the physician and the family of their office. But although absolutely he can with difficulty resist the will of relatives, the physician or surgeon nevertheless possesses in his very skill an authority by which he can perform that operation safely. The best counsel often will be that immediately, asking nothing, he extract the fetus, as though a natural complement of the care promised. If there is morally no hope of baptism, the reason ceases on account of which, even after the death of the mother, the fetus is to be extracted. But in the very womb of the dead mother he will soon perish by asphyxia.

A surgical operation, for instance a Caesarean section, which is necessary for procuring baptism for her infant, per se must be undergone by the mother, even with her own danger, if the baptism which otherwise cannot be conferred is sufficiently certain. For preserving temporal life, she will not have to admit that danger. Since today operations are made much more safely than before, and they bring no true horror to a person put to sleep, the mother is gently to be induced to obey the counsels of an upright physician. Yet we shall beware lest a woman who is foreseen as going to die be placed in bad faith. Therefore often her grave obligation will have to be passed over in silence.

On Ecclesiastical Penalties. "Those procuring abortion, the mother not excepted, incur, the effect having followed, excommunication latae sententiae reserved to the Ordinary; and if they are clerics, they are besides to be deposed" (c. 2350 §1). - "They are irregular from delict.... 4° Those who.... have provoked abortion of a human fetus, the effect having followed, and all cooperators" (c. 985, 4°).

They procure abortion who, by physical or moral action, efficacious and with direct intention, bring it about that a fetus not dead is expelled before seven months from conception. By the new law, from c. 2209 §§1-3, those commanding, and those furnishing positive and necessary cooperation, such as physicians, are comprehended by the censure; also those who, on account of a further good end, exercised an illicit abortion. Concerning the cooperation of a pharmacist

who merely sells a potion, it will be more difficult to establish that it was necessary. The mother herself is no longer immune from censure. Yet one who has yielded to grave extrinsic fear escapes the censure. - But the censure is incurred from the moment at which the fetus is ejected, from the means applied. - If someone repents before the effect has followed, so that he has received absolution, he seems immune from the censure, which cannot now accede to the sin as accessory. If otherwise, without use of the sacrament of penance, he sincerely has grieved, today from can. 2209 §5 compared with 2229 §3, he seems to be held by the censure (cf. also c. 2231).

N. B. In interpreting the present censure, certain authors, although they wrote after the Code, seem to have passed over canons 2209, 2229-2231. Thus Pighi, *Curs. theol. mor.*, l. 3, nn. 551, 552.

Craniotomy, although graver in itself, since it is plainly distinct from abortion, is not affected by this censure.

But irregularity today receives the same interpretation as the censure. Cooperators, however, seem to be positive cooperators only (from c. 2231), although Cerato (*Censurae vigentes*, n. 161, p. 229) also comprehends negative cooperators. Cf. Gen., I, 634; Pighi, l. 3, n. 602. But those who have exercised craniotomy do not escape irregularity from homicide.

— Indirect abortion, on account of a grave and proportionate cause, is admitted by all. For then another good effect is intended or chosen, which can be obtained by no other way, and the expulsion of the fetus is actively permitted.

But "in practice it is not always easy to discern whether a certain medical action is a direct or indirect killing of the fetus" (Prummer, II, 141). That it be indirect, no utility can be sought from the expulsion itself of the fetus, as such, or from the grave wound inflicted upon it.

Cases. 1. Therefore a mother affected by a lethal disease can use necessary remedies which, at the same time as they cure the disease, induce the danger of abortion; the very uterus morbidly affected, which cannot be tolerated longer without danger of life, can be taken away from her. And these things are certain.

2. But is it lawful, for replacing the uterus, to evacuate the liquid of the amnion? This is controverted. Certainly incision of the amnion is the most usual mode of procuring abortion. But, in the case, the incision is not made so that abortion may follow, but so that the uterus, which by its collapse brings the mother into danger of life, may be restored to its place. Hence you would say the matter is lawful. Yet a difficulty again arises from this, that that liquid is contained by a membrane which pertains to the fetus. Therefore the incision seems to have the nature of a lethal wound. Wherefore the matter is disputed, and the negative parts seem truer, unless, by an incision or puncture prudently made, by which only a part of the liquid flows out, the abortion itself can probably be avoided and follows only per accidens. And similar difficult cases can arise where the fetus itself seems to exercise an action positively and gravely harmful.

3. Therefore if, by new increases of science, similar difficult cases are proposed where the fetus itself, not simply as fetus, but, for example, as morbid, seems to exercise an action positively and gravely harmful, nothing is to be established precipitately, but the case is to be subjected to serious

examination, with the principle always firm that no utility can legitimately be obtained through an action directly occisive as through a means.

On the Ectopic Fetus. 1. Description of the Fact. Sometimes, on account of various causes, for the most part unknown, the fertilized little egg, outside the uterus, either adheres to the ovary or oviduct, or, falling down into the abdomen itself, is applied to some intestine of the mother, and there begins to grow. Hence tubal, ovarian, and abdominal pregnancy are distinguished. Yet Cappellmann-Bergmann, *Medicina pastoralis*, p. 50, warns that it is not so certain that the third is had.

Extra-uterine pregnancy, as the same Doctors explain, for the most part is naturally interrupted, either by internal abortion, when it is either reabsorbed or, as it were, "petrified," or by the splitting of the oviduct, or rupture. Then sometimes maternal blood is poured out in such quantity that thence the mother is brought into danger of life. But the effusion is sometimes minimal or even none. Rarely does it happen that the pregnancy perseveres so that, by means of laparotomy, a living and viable fetus can be brought forth.

Therefore every extra-uterine pregnancy renders the life of the mother less secure; internal abortion or rupture creates a positive danger of life. Extra-uterine gestation, for a certain time, is very difficult to recognize. But if, to recognize it, you open the abdomen of the mother, then you are almost forced to cut out the sac with the fetus, so as to spare the mother's days. But if it is known otherwise, then accurate observation diminishes the danger of the mother.

Not a few physicians treat extra-uterine gestation as if harmful cells had grown in the body (*excroissance*), or as a tumor to be cut out, or directly to be destroyed, for example, by electric force or injection of morphine.

Others deny that the hand of the surgeon is to be applied until compelling necessity has been present.

2. Moral Judgment. 1. That distinction cannot be denied which intervenes between an ectopic fetus and a fetus contained in the uterus. Nature itself, as Lehmkuhl says, I, 1007, has prepared existence in the uterus for the fetus, while the ectopic fetus is not in its place. Hence it is more per se dangerous and damnose to the mother, and in that part by which it adheres to the mother it can more easily have the nature of a deadly tumor or cyst. But because the nature of the thing which the mother bears outside the uterus is often doubtful, the question itself is at once divided into these two: what is lawful if it is uncertain whether there is a tumor or a fetus; and what is lawful if it is certain that a fetus is present.

2. The doubt, as is plain of itself, must be supposed to be such as is morally invincible. Therefore, as long as it is uncertain whether there is a tumor, which can be cancerous, or a fetus, not a few today, with Genicot leading, I, 376, in earlier editions, permit that it be removed: whether because the certain right of the mother prevails over the probable right of the fetus; or because the mother is in possession and is permitted to protect herself against that which can be deadly and is not proved to be a man; or because, as Ferreres says, I, 501, II, with positive arguments lacking, human life is not probable. He rightly lays down the principle that what is not lawful for a certainly pregnant mother is not lawful for one probably pregnant.

Relying on this principle, which Aertnijs-Damen also mentions, I, 581, we shall say with P. Salsmans, ed. 10, I, 377, that the norms concerning a certain fetus are to be transferred almost equally to a probable fetus.

Yet it is right to take the responses of the Holy Office, immediately to be alleged, concerning the certain fetus alone.

3. What If an Ectopic Fetus Is Certainly Present. Concerning this matter the Holy Office responded twice.

> By the prior decree, May 4, 1898, it declared: "Necessity compelling, laparotomy for extracting ectopic conceptions from the womb of the mother is lawful, provided that provision is made for the lives of both fetus and mother, as far as can be done, seriously and opportunely." - By the other, May 5, 1902, to the question "Whether it is ever lawful to extract from the womb of the mother ectopic fetuses, still immature, the sixth month after conception not yet completed?" it answered: "Negatively, according to the decree of May 4, 1898, by force of which provision is to be made for the life of the fetus and of the mother as far as can be done, seriously and opportunely; but as to the time, according to the same decree, let the speaker remember that no acceleration of birth is lawful unless it be performed at the time and by the modes by which, from things ordinarily happening, provision is made for the life of the mother and of the fetus."

By these responses there is certainly confirmed what theologians already handed down before: that excision of the fetus is not lawful before the present necessity of the mother. But what if the necessity of saving the mother urges?

In so grave a matter it will help to hear recent authors.

> Antonelli, II, 112, departing in the 1909 edition from the more benign sentence which he had defended before, now does not dare to permit that in extreme danger, where the mother with the fetus is going to die on account of the imminent splitting of the cyst, an immature fetus be extracted; yet he is content with a very slight hope of saving the fetus. - We confess that we do not see how this is composed with the words of the response of May 5, 1902, which require a time and mode "by which, from things ordinarily happening, provision is made for the life of the mother and of the fetus."
>
> Lehmkuhl, I, 1010, 1011, observes that the decree of May 5, 1902, which seems to sound more severe, lacks pontifical approval, and can be restricted "to those cases in which that excision is equivalent to the procurement of direct abortion. But in the proposed case," or when a tumor is opened "which sometimes appears from extra-uterine conception in various organs of the mother, and unless it is cut away, casts the mother into the highest danger and, with the organs ruptured, into certain death," there is had only the indirect extinction of the fetus. "For just as in a normal pregnancy it is lawful to cut out a morbidly affected uterus which brings the mother into danger of life, with the fetus, and yet in this way the fetus is not directly, but only indirectly, devoted to death: so it will be lawful to cut out a tumor lethal to the mother, although an ectopic fetus is contained in it, nor is this cutting directly occisive of the fetus, but only indirectly."

This solution is approved by Genicot-Salsmans, I, 376; Piscetta-Gennaro, II, 223, 224; Prummer, II, 146.

Aertnijs-Damen, I, 583, has these things: "The decisions brought forward can be understood of laparotomy of an ectopic fetus as such, or insofar as the fetus itself by its abnormal place creates danger for the mother, so that extraction of the fetus is in reality a means to saving the mother; but in the cases set forth, not the abnormal state of the fetus, but other morbid affections create danger for the mother. Nor does direct killing seem to be present, since the death of the fetus is neither the means to saving the mother, nor necessarily the end of the action, whether of the work or of the one working."

Cappellmann-Bergmann, *Pastoral Medizin* (ed. 18), understands the response of May 5, 1902, concerning the extraction of the ectopic fetus as such, not concerning the excision of a tumor joined with the fetus.

Mode Prohibited by Several. Lehmkuhl, l. c., Genicot-Salsmans, l. c., wholly prohibit the use of electric force because then the fetus would be killed directly. Yet rather, as it seems, electric force or a similar means would by way of one thing suppress the tumor and the fetus. But this other reason is added, that only by extraction, if it can be done, can provision be made for the baptism of the fetus. Injection of morphine, according to Antonelli (*Medicina pastoralis*, II, 111), would be useful only for killing the fetus.

A Certain Conclusion. Not without a certain anxious solicitude do we weigh cases whose solution, whether you embrace the more benign or the more severe one, must be said to be at least indirectly fatal to several human lives. Moreover, the conflict is to be deplored by which, in this matter, the medical schools of today are torn away from the theological schools. And if, as has been reported to us, it also happens that a Catholic professor of medicine more or less openly teaches those things concerning medical abortions which do not agree with the responses of the Holy See, by how much greater difficulty in exercising their art will Catholic gynecologists be pressed, who, while they obey the Holy See, a) seem to depart from the precepts of their own school, b) unless at least they timely set forth the difficulty of conscience, perhaps do not escape the penalties of civil law for having neglected, in extreme necessity, the operation by which the mother could have been saved. Cf. Prummer, I, 136, citing art. 222 of the criminal Code of Germany. Therefore we have in our wishes that by clear documents the conscience of Catholics be directed firmly, and that physicians themselves consider absolute moral principles with greater attention, and acknowledge how well the Church deserves of humanity, while she strongly inculcates and urges the inviolable rights of the human person.

VI. - On Rape and Adultery.

1. By the name of rape (*stuprum*) we understand here the lustful oppression of an unwilling person. Now he is injurious to a woman who by force or fraud extorts copulation from her; but directly an injury is done to her alone, unless she is married.

We speak of the oppressed woman alone, because lustful acts of violence against other persons are not of themselves damnose to the body, nor do they have the consequences, even of the economic order, which involuntary fecundity brings with it.

2. Adultery, if a wife is unwillingly oppressed, violates both spouses; but the adulterous spouse and his accomplice are injurious to the other spouse.

On Restitution on Account of Rape. The temporal damage, which alone is to be repaired here, is the difficulty which the girl will suffer in marrying well, and the expenses of supporting the offspring, if any is born from the copulation. Hence the corollaries:

1. The violator owes nothing if defloration did not impede marriage, because it remained hidden, or became known only through the indiscreet revelation of the girl, otherwise if through a just action of hers; or if the virgin could not have married, or would not have wished to marry, or if she married equally well.

The best compensation will be made through marriage. Yet the girl does not seem to be able to exact this *per se*. Nevertheless, he who bent a girl by a true or fictitious promise of marriage will have to marry her, according to the most common opinion. Nor does the canonical nullity of the promise stand in the way, since it is considered as an instrument of deception or fraud. Yet the obligation of marrying ceases if, from the excessive inequality of condition or from the tenor of the words, the fiction could easily be recognized; or if the violator himself was deceived about the virginity of the woman with whom he sinned; or if the marriage, on account of coercion or disparity of conditions, especially of education, does not seem capable of being happy. For it would be too hard to condemn someone to an unhappy life; nor is it truly in the interest of the woman herself that such a marriage be made. Then it is enough that the violator give the woman a dowry which removes the obstacle to marriages as honorable as those which she would have obtained.

If the woman was not intact, often damage is absent. And, unless there is question of an honorable widow, a woman already known dishonorably before could easily perceive the fiction of an excessively lavish promise.

2. As to the expenses of supporting the offspring, the unjust violator alone must bear the expenses of supporting his own offspring.

On the contrary, a woman who makes gain from her body is held before the man, because she is judged to have undertaken that burden upon herself.

Otherwise, both are held equally *per se*.

Moreover always from piety each parent is held *in solidum* (cf. below) to supporting the offspring. It is enough that he be supported according to the condition of the mother. - As to children whose filiation has been demonstrated civilly, the obligation becomes civil.

Prudence of the Counselor. Before he declares the obligation of restitution or advises the mode of external action in this matter, let the confessor or counselor weigh all things well, and ask an expert man about prudent execution, unless he prefers to remit the penitent to a man of this kind. For cunning women know how to entice an inexperienced young man so that he thinks himself the seducer, while he has merely fallen into a snare prepared by women. But after the sin has been committed, they complain that they have conceived by him, when either they are in no way pregnant or have sinned with several. Then the money which someone has given to prevent the disclosure of the matter, or to redeem himself from the harassment of accusers and barkers, is easily converted into an argument of guilt, so that it gives occasion for long-lasting servitude.

On Restitution on Account of Adultery. 1. Adultery brings temporal damage from the supposition of adulterine offspring, who is held and treated as legitimate by the ignorant husband and relatives. For if they consented, they would suffer no injury.

The supposition of a child is a fraud by which he uses a strange man as father, and is introduced as legitimate into his family.

2. But in doubt the offspring can be presumed legitimate.

3. But each adulterer is held *in solidum* for all damages which followed *per se*; but not for others. Whether both are held in an equal place, or the adulterer only after the woman: this is disputed. For the woman alone supposed the adulterine child. But because by the common adultery she was morally compelled to do this, most assert an equal obligation. Yet the woman alone will be held if she could easily withdraw the child, just as the adulterer alone will be held who oppressed the woman by force.

4. The damages, however, contained by *per se* connection are support, the customary gifts which the offspring is accustomed to receive from his parent or ascendant, and the goods which he has received from the same by legacy or inheritance. Regularly, goods which he has obtained from other blood-relatives by gift, testament, or succession are judged connected *per accidens*, or rather of more difficult foresight. Cf. Lugo, d. 13, n. 39, 40; d'Ann., II, 280; while Molina speaks more severely, tr. 4, d. 102.

The reason why nothing is to be restored to other blood-relatives and ascendants, for the most part, seems to be set forth better and more distinctly thus. The supposition of the infant was not injurious to them, nor could it be manifested to them without his infamy. Again, they are not accustomed to attend so much to the true origin of a boy who is said to be legitimate by status, so that it is not certain that they are in reality unwilling.

5. Excuse. But they must restore only insofar as they can do it without detriment to a higher good or danger of a greater evil. Wherefore, on account of discords, infamy, hatreds to be feared, and already the immense sadness itself to which the husband ignorant of the matter is exposed, scarcely ever will the adulteress herself be compelled to confess her crime. Nevertheless she must, as much as she can, compensate the damage in other ways: by more diligent administration of the family property; by less personal adornment; by favor made in the testament to the legitimate children, if nothing grave is to be feared from this; by counsel prudently given to the spurious son concerning religious life. - The adulterer himself will often be excused either by too great difficulty, or by the very doubt in which he can be, whether or not the offspring is his own.

6. The adulterine son, as long at least as he is ignorant of his origin, is to be treated as a possessor in good faith. Nor ought he to believe his mother affirming or swearing it.

7. If several at the same time have had access to the wife of another, what is the right will be said below, where cooperation is treated.

APPENDIX.

On the Action of Public Power and War.

Order of Speaking and Utility. - Because physical persons are members or parts of a perfect society, whose rights are exercised through public power, we must examine briefly how far that power can

touch persons as members in their body by command and sanction.

Thus an occasion will be given to us of speaking very briefly about war. A fuller exposition of the matter would lack utility, since today especially those who meditate public slaughters are accustomed little to ask and hear theologians. But our parts seem to consist in recalling and inculcating a few principles which, if before war they have been firmly impressed upon souls, will be able to temper at least somewhat the horrors of calamities of that kind.

I. What Public Power Can Do Against the Innocent. Not even public power is ever permitted, whether in peace or in war, directly to kill an innocent person, or to take vengeance upon innocent persons, for example hostages, for the delict of others. If a tyrant demands it, the republic can compel an innocent person to go to the tyrant, because he is held to expose his life for the republic; and one refusing, since, as such, he has become guilty, it can hand over. Yet a virgin, on account of the danger of consent, must never give herself to be violated. Wherefore she can indeed be permitted to her own lot, but never handed over for this end.

II. What Against the Guilty. By public authority and with the order of law preserved, an evildoer can be punished even by death. From preserving that order, on account of the extraordinary necessity alone of the republic, where provision must be made for public safety, public powers can be dispensed and can dispense.

The formal reason why they can exact bloody punishments does not seem to be sought from the quality of parts which citizens have. For the body pertains to the person, inviolable by men. But since capital punishment is demanded by social necessity, God, to whom the right certainly belongs, did not omit to provide for that necessity by a power bestowed.

III. On War. 1. On the Justice of War. a). War cannot be just unless for proper defense or for exercising vindicative justice.

But before he declares war, the prince must take care with all diligence that he be certain of its justice and of a grave cause. If the right is only probable, the matter is to be settled by friendly compact or through arbiters. If the other party refuses these things, it then commits a certain injury which, if there is proportionate cause, it will be lawful to vindicate by arms. Cf. Waffelaert, *Iust.*, II, 444. But once the justice of the war has been perceived, it is to be proposed to the opposing party. Competent satisfaction offered by this party must *per se* be accepted.

In defensive war, it is enough that there is no certainty of an injury having been committed.

b) Common Subjects, unless there is a vehement contrary suspicion, ought not to inquire into the justice of the war. But today especially, where in public administration so little attention is paid to the obligation of conscience, learned men and theologians cannot rashly admit and defend the justice of war. The same must be said of voluntary soldiers.

c) He who is compelled to have part in an unjust war must abstain from hostile acts, and surrender himself to a hostile soldier whom he cannot avoid by flight. If the opportunity of acting thus is lacking, he will be able, when invaded by the enemy, since by error he is held as guilty, to use the right of defense against him who does not wish to grant life to him surrendering himself.

2. What Things Are Lawful in a Just War. a) In a just war it is lawful to do all those things which are necessary for the end of the war, and are prohibited neither by the law of nature nor by

agreements of the law of nations.

For the common good of men demands that those agreements and rules of the law of nations, by which such great evils are tempered, be observed sacredly at least as other agreements are, within the tacitly agreed limits of human foresight.

Faith given to an enemy must *per se* be kept.

Reprisals are lawful where the injustice is certain, satisfaction has been denied, and they are exercised upon guilty persons or upon goods.

Those who carry on a just war can, according to the case, treat opposing soldiers as formal evildoers, or at least as aggressors materially unjust, with international agreements saved.

Soldiers, I say, because among cultivated nations this is received today, that war ought to be circumscribed by the armies themselves, so that unconscribed citizens and soldiers must abstain from mutual offense.

b) On the Conversion of War into the Combat of a Few.

It must not be said too absolutely that war can, by public authority, be converted into the duel of a few. For this will be lawful only when he who pursues his right does not thereby make his condition worse. Cf. Sanchez, *Decal.*, l. 2, c. 39, n. 15, 16.

3. Right When War Is Finished. a) When war is finished, restitution of things taken and of expenses can be sought, besides a just punishment or congruous satisfaction.

b) Treaties of peace are rather imposed by the victor than freely agreed upon. Yet because it is of the greatest interest for the common good of all that an end of warring be made, they are to be observed sacredly, unless they labor under the most manifest injustice. Therefore they are fortified by a much broader presumption than private agreements.

4. On Restitution. As to restitution, common soldiers of the same army, even if they conspire, are nevertheless not judged to act from conspiracy. For if you except those immediately nearby, the rest are not moved by the cooperation of a determinate soldier. Wherefore, in an unjust war, their obligation comes down almost to this: that they repair the damages done by their own hand. Nor do the owners of things will or expect more. More grave, as is plain, is the obligation of the war leader, who must also repair damages which are inflicted by soldiers on account of his blameworthy negligence.

5. Customary Irregularity. Finally let us recall that by the new Code the irregularity from defect of lenity has been suppressed, so that only those become irregular who have made themselves guilty of gravely blameworthy homicide or mutilation.

Article II. - On Real Injury.

§ 1. - On Injury Itself.

1. Specification. Principle. All injuries in goods of fortune are, as such, of the same moral species; not likewise of the same juridical species, whether you consider the civil forum, where the notion of theft must be attended by us, for example, on account of the special right of prescription to which a stolen thing is subject; or also the canonical forum, for example, on account of reserved cases.

2. On Theft and Robbery. Theft is the hidden taking of another's thing, while the owner is reasonably unwilling. It is called hidden insofar as it is done without force inflicted on the person of the owner; by which note it is distinguished from robbery, in which, therefore, personal injury concurs with real injury. - Taking, in the civil forum, is understood strictly. Wherefore a depositary, a borrower-for-use who refuses to return the thing to the owner, is indeed morally, but not civilly, guilty of theft. Taking implies an intention of gain, which is absent from damnification; this also in the forum of conscience pertains to the same species; nevertheless the distinction must be attended to in the estimation of restitution. - Another's thing is supposed, at least as to the right or that which is taken away. - The owner must be unwilling as to the substance or the thing itself, and not only as to a manner rather uncivil, etc.; reasonably, so that, all things weighed, he deservedly is unwilling, and ought to concede nothing to persons or circumstances.

For, according to the various person taking, the thing can be changed morally. A prodigal man from whom monies are withdrawn to impede their prodigal use would be reasonably unwilling if it was done by an outside person, but not if by his wife. Nor is a faithful servant, prevented by shame or another cause from asking permission, to be blamed because he gives to a very needy poor man a not too great alms which the master could not reasonably deny.

2. To theft of a thing either sacred or entrusted to the Church to be kept, the species of sacrilege is added: cf. n. 269.

On Grave Matter of Real Injury. Principles. 1. Although simple theft and injurious damnification in goods of fortune do not equal robbery and sacrilege in malice, they are nevertheless *per se* grave sins, because they are contrary to charity among men. "For every harm inflicted on another is of itself repugnant to charity, which moves one to will the good of another. And therefore, since injustice always consists in harm to another, it is manifest that to do what is unjust, from its kind, is a mortal sin" (2, 2, q. 59, art. 4, c.). Therefore that injury cannot be conceived as a sin which, according to varied quantity, becomes light or grave, but must be called a sin *per se* grave, which nevertheless can become venial *per accidens*, namely when, on account of lightness of matter, the injury is to be judged morally imperfect. For, according to the principles of St. Thomas, for example 1, 2, q. 88, art. 1, ad 1, a sin grave by its kind does not become light unless, either on account of deficient deliberation, or on account of deficient matter, it is morally imperfect (cf. I, 413).

Therefore the formal reason why a certain quantity can be usurped unjustly without grave sin is not the lesser damnification itself as such, but the substantial observance of the rights of others which can be combined with that usurpation; or also the easy tolerance of the owner from whom something is taken secretly, so that it is not judged to be a reasonable cause of grave offense, but allows human friendship to remain substantially intact. Cf. 2, 2, q. 59, art. 4, *sed contra* and ad 2.

2. What Matter Is Thence Judged Light.

That a lesion of right be light, it is necessary that at the same time, according to probable estimation: a) it bring no grave privation to the owner himself; b) nor that the thing taken be in itself, i.e. in such a definite society, of universally notable utility; c) nor that the lesion be apt to have a grave repercussion in common security, which it is in the interest of all to protect.

According to the first consideration, matter is relatively light or grave; according to the two later considerations, matter is to be prudently defined as absolutely grave, i.e. with respect to the injured

person set aside.

Concrete Estimation. a) On Relatively Grave Matter. Most theologians define grave matter for workers, whom they suppose citizens of the lowest order, by a day's wage or profit; many transfer a similar rule to all men of modest condition; indeed all are to be judged to feel a notable privation if they are despoiled of the value of an entire day. Hence we seem able to establish this perpetual rule: relatively grave matter is that which morally deprives the injured person of the revenues of one day. Cf. also Noldin, II, 415. But probable estimation of revenues is to be gathered from social condition, from customary stipends, etc.; and, on account of festive rest, it will be better to consider the seventh part of weekly profit rather than the daily wage.

But because this rule is established concerning a father of a family, where there is question of fully adult persons who are celibate, or have no family to support, relatively grave matter seems able to be increased almost to double.

Again, however, an injury which is modest as a taking of a thing can become grave as a damnification, if its privation brings grave detriment, because, for example, it is an instrument of labor and cannot easily be supplied.

Where the condition of the injured person is unknown, contrary to what R. D. Garriepy, IV, 262, admits, one cannot attend to absolutely grave matter alone; but, if another indication is lacking, the ordinary condition of that person is to be presumed among modest persons or even the moderately rich. For this, says Noldin, II, 415, note, "is accustomed to happen more frequently."

Yet one must beware of mathematical rigor in this matter.

Since, in the present circumstances of things, prices and revenues are so uncertain, to define materially what grave matter is to be assigned to the various conditions of persons seems very difficult and at the same time unstable. Noldin, II, 115, set grave privation for begging poor at 1 lira or even less according to greater poverty; for workers, 4 lire; for artisans, merchants who labor in their own workshop, 10 lire; for the moderately rich, 20 lire; for the truly rich, 30 lire. Génicot, I, 507, setting nevertheless for a worker a day's wage, and several others agree sufficiently. Yet who does not see that those estimations are at present too severe, since the daily wage of workers is accustomed to reach or even surpass 15 lire? Wherefore we think those indications must be doubled.

b) On Absolutely Grave Matter.

This matter can be investigated more directly both by the authority of theologians and by intrinsic reason.

a) The Way of Extrinsic Authority. If, among the opinions proposed today, we choose the middle as safer, we shall estimate absolutely grave matter at about 50 francs. Yet this computation, in regions in which, either on account of the quality of the money as paper, or on account of the extraordinary dearness of things, the comparative force of money has decreased much, is to be tempered so that it be estimated at least at double; so that, in the last edition, Génicot-Salsmans, I, 507, reasonably increased absolutely grave matter to 100 francs.

Nor does he seem to be reprehended who, since before the war he defined grave matter as 100 francs, now defines the same at 150 or 200 in a region where gold money has been made foreign to use. For although the prices of things have more than tripled, the repercussion to be feared upon common

security forbids us to increase grave matter by the same ratio by which the prices of things have increased; but it does not seem to have grown beyond double.

Today Bulot, I, 513, thinks it is found between 25-30 francs. Tanquerey, III, 430, thinks absolutely grave matter in Europe is of 20 or 30 francs; in the U.S.A., seven or eight dollars. Ferreres, I, 713, places it, for various regions, between 30 and 40 francs; which quantities he judges it probable should be almost doubled in present circumstances. Arregui, *Nummarium*, n. 312, judges absolutely grave matter in our days to be determined, according to the diversity of regions, between 40 and 50 francs; in a note, however, he does not reprehend those who answer more benignly. Before the war, Palmieri confessed that he would not reluctantly assent to those estimating absolutely grave matter, not to stand below one hundred francs (Gury-Palmieri, I, 607). This Ojetti approved, *Synopsis rerum moralium et iuris Pontificii*, n. 2259. Nor today do Piscetta-Gennaro, III, 251, reprove this, adding these things: "Those who before the war required a sum of one hundred lire today and as long as today's condition of things remains would not undeservedly say that, at least among us, there is not absolutely grave matter which does not reach almost 400 lire; and perhaps there will have been among them those who require a greater sum." Noldin, *Praecepta*, n. 116, still estimates grave matter at 30 francs; but Garriepy, in the Canadian region, thinks absolutely grave matter to be 8-10 dollars. He himself judges that the opinion of Palmieri sins by excessive benignity. Yet observe that already in the time of Lessius there were those who placed absolutely grave matter not below one hundred crowns; which, however, Lessius rejects as lax (*Iust.*, c. 12, n. 29-31). Prummer, II, 80, places absolutely grave matter at 100 francs, adding "of gold value." But he himself teaches this in Switzerland, where paper money is received in use equally with gold money.

b) By adhering to the principles of St. Thomas proposed above, perhaps you will incline toward an opinion more severe than that which is received today. Does not the Angelic Doctor himself (2, 2, q. 59, art. 4, ad 2), as an example of a small theft, allege if someone "takes away from another one apple, or something such"? Yet if men were asked what they would hold as true and complete thefts, and what rather as arts less approved or not very honorable, they would come near, unless we are mistaken, to the middle opinion of theologians praised above. Indeed they would not attend to this distinction if there were question of a man who is ready to steal everything; but if a man is supposed who, even when he had the occasion of stealing a greater sum, deliberately took for himself from a very rich man no more than 50 or 100 francs, they would not call him simply a thief.

The question could also be posed: "For what sum, stolen from you, would you wish the thief to be condemned to eternal punishment?"

But then they would easily be led into conclusions too benign, because few good Catholics desire eternal punishments for thieves on account of sums taken from them. Thus a person moderately rich, once questioned by us, placed grave matter not below a thousand francs.

Finally observe these things. By estimating grave matter, we know what restitution we must impose under grave obligation; but from this alone judgment cannot be made about the sin committed. For he who meditates despoiling someone is not excused from grave sin because the victim has little or almost no money with him. But that the sin be light, it is necessary that the very intention of the thief not exceed light matter.

Today the worker can no longer be considered as the one from whom the least relatively grave matter is estimated, since many citizens of the middle order have smaller revenues and live more sparingly than many workers.

As Tanquerey, III, 436, well observes, the confessor is helped in his ministry by these estimations; but they would be proposed from the pulpit very imprudently. The preacher would seem to add stimuli to thefts.

Questions. 1. What matter will be judged grave in theft of a sacred thing which cannot be estimated by price?

Resp. The gravity is then to be gathered from the dignity or rarity of the thing. Thus the theft of an honored image, of an notable relic, will be grave.

2. Toward whom is absolutely grave matter alone to be considered?

Resp. **1.** Toward those whose daily revenue equals absolutely grave matter, say 100 lire.

Wherefore grave matter alone is to be attended to in injuries done to the treasury or to most communities.

2. Indeed, if the injured persons have no burden of a family, those already who are accustomed to receive beyond half the part of the aforesaid sum are judged to suffer grave injury through the theft of a quantity absolutely grave alone. For, as we wrote just above, with regard to persons fully adult and at the same time celibate, grave matter seems able to be increased to double.

3. Génicot, I, n. 509, thinks that absolutely grave matter alone must be attended to if the sum pertains to a pious work, because then no one has a strict right to that money.

Yet we judge that this cannot be admitted, but that one must see whether or not the end of the pious work is notably harmed. Suppose a box destined to collect alms of Masses for those in agony. Will you say that he sins only lightly who deprives the dying of three Masses? Yet the sum stolen will not be absolutely grave. Likewise, if out of 30 lire which would suffice for redeeming a captive, 20 are taken away, the matter will be judged relatively grave. But the reason added, "that a strict right belongs to no one," would prove too much. For unless a strict right is violated, no injury is committed. But the lesion of the end itself, as such, is to be considered unjust.

Causes Which Permit a More Benign Estimation. Place is prepared for a more benign estimation on account of two kinds of causes: on account of personal or real considerations which show the injured person positively less unwilling; - on account of the mode of injustice, when less audacity and less danger of frequency bring it about that a lighter sanction suffices.

But what if, from affection for a thing of modest value, the person is to be thought more unwilling and will be saddened by a grave and reasonable sadness? Then the thief or damnifier will sin gravely against charity rather than against justice.

I. On the Former Kind of Lessening Causes. a). In things which nature rather than the hand of man produces and which are greatly exposed, such as fruits along a public road, property is held as if a little less sacred and the very economic value of the thing, on account of danger, is diminished. Therefore a greater quantity will complete grave matter.

As Noldin, II, 118, excellently observes, today that can no longer be admitted which formerly, when fruits were made of less account, authors commonly conceded: that it is lawful for a traveler to eat grapes and apples to satiety, unless they are rare and of great price and nothing is carried away (St. Alph., III, 529). Yet he rightly permits that wild fruits (mushrooms, strawberries, blueberries) be gathered and sold by passers-by and the poor, from the presumed permission of the owner, and therefore unless he expressly forbids it; and he adds that a prohibition of gathering such things in municipal woods is *per se* to be judged merely penal. Nor does he accuse of sin him who here and there plucks one or another apple or cluster of grapes, and say the same of an ear of wheat; or workers who eat from the fruits for the gathering of which they were hired. Finally he estimates that he sins only lightly who rather often takes away that quantity of fruits which he himself can eat.

b) To take away a thing of greater moment, which the owner cares for so little as if it were of slight moment, will be a light sin.

c) Cuttings (*ritagli*) which remain from material supplied to a weaver or tailor are *per se* to be returned to the owner who supplied them. But one must consider what usage bears, to which the owner is thought to have accommodated himself. If nevertheless they are modest, so that they are neglected by the owner, the matter will easily be able to be excused, although those practices are less to be approved and commended.

Many authors have written about this matter. Sanchez, *Consilia moralia*, l. 2, c. 7, dub. 2, n. 1; Lugo, *Iust.*, d. 16, n. 84, 85; St. Alph., l. 4, n. 292; d'Annibale, II, 253, note 27; Aertnijs-Damen, I, 720, Quaer. IV.

d) Poor persons who, in a large wood, gather wood of which they personally have need, provided that by cutting down trees, etc., they do not harm the forest, will easily be excused at least from grave sin.

d) Conjunction of persons, just as it more easily makes certain usurpations of goods immune from injustice, so also, in acts strictly unjust, can render light matter which otherwise would be grave. Judgment must be made with attention to the quality of the one receiving and of the one suffering, the nature of the thing taken, the reason of the delict committed, and the intention by which it was sinned. Thus, other things being equal, for a wife and guilty children, the customary matter can be increased at least by double. Authors judge that the matter can be amplified by half when a religious is unjust to his own monastery. - Domestic servants, if they preserve that human and common fidelity which is compatible with certain secret takings, are easily immune from grave guilt; but the obligation of faithful service makes masters more unwilling as to several other thefts, for example, money from the master's chest. Therefore they sin more lightly if, notwithstanding the aggravating reason of fidelity, they seem to be excused by human frailty.

II. On the Other Kind of Lessening Causes. The cases to be examined here are of the so-called coalescence of several thefts or damnifications.

A twofold question is moved here: when those thefts coalesce, so that, for the gravity of sin and the debt of restitution, their sum must be considered; - what matter must then be judged grave.

On Coalescence. The principle is: small thefts or damages coalesce when they flow together into one moral thing. But they flow together:

a) On Account of the Unity of the Injured Subject. - But a community or society of persons - the Church, the State, a parish, a monastery - is regarded as one subject. - For he cannot be treated more benignly who by several delicts than he who by several agreements makes himself the debtor of the same person. Therefore new injuries are *per se* then joined with prior ones, unless the matter is such that the owner, considering riches and liberality, would condone it; as if there were question of a few lire which a rich man would easily give to one asking. Indeed they are not condoned on account of fraud, but on account of trifling value they do not coalesce into one grave thing. Yet if the frequency of the delicts brings it about that the owner suffers a new theft more unwillingly, the delicts coalesce. Therefore, that they not coalesce, it is necessary that, considering the lightness of the thing and the interval, the memory of the prior one has almost perished when the other follows.

Practically, lighter thefts accidentally repeated with an interval of one month or 15 days, and very light ones even separated by a smaller space, are benignly judged able to be separated; while those which approach grave matter will be able to subsist when separated only by an interval of two months. Finally, rather light small thefts in consumable ordinary foods almost never coalesce.

b) On Account of Unity of Action or the Moral Connection of Actions. This coalescence is had when, by one act, a thing which pertains to several is stolen, or when at the same time, or separated by too brief an interval of time, small thefts are perpetrated by distinct acts. Indeed, *per se*, individual small thefts committed to the damage of several would remain separated, but that addition of small thefts is required so that there may be an efficacious sanction of justice, and lest men be too much enticed to pernicious frauds by the lesser gravity. But when light damage is inflicted on several, cases of coalescence are to be treated more benignly than when one person is injured by several damages. Indeed, when there is question of damages done without gain, the coalescence of damages which are done to several is not certain.

c) On Account of Unity of Intention. When someone from the beginning determines to arrive at a grave sum through small thefts, the actions are so continued by this intention that they are separated by no interval, unless so great a distance has been had that the intention is judged revoked.

d) On Account of Unity of Collection: to retain another's thing in grave quantity is also grave. But that the fruits of several thefts be thought morally preserved, it is not enough that the individual thefts brought some gain, if that was soon consumed, for example, in daily food; but it is necessary that in some sufficiently distinct and permanent good you discern, as it were, the collected spoils. That kind of coalescence depends in no way upon the intervals of the thefts.

e) On account of the unity of conspiracy of several who individually have done damages or thefts.

On Grave Matter in Thefts or Damages Which Coalesce:.

a) Principle and Question. When several thefts or damages, taken singly, are not objectively grave, authors agree that a greater quantity is required for grave sin than when there is question of a single injustice. With this principle the question is connected whether on that account absolutely grave matter itself can be increased, or, on the contrary, only relatively grave matter is to be estimated more benignly, so that voluntary injury is always grave if it equals absolutely grave matter.

Noldin seems to think that beyond absolutely grave matter sin cannot be light, on account of the various estimations which he proposes, II, 418-423, in which he never exceeds absolutely grave

matter; and Prummer, II, 82, who nevertheless at n. 83 alleges Bannez, where he teaches that "grave matter is present if a daughter annually stole 50 gold coins (250 francs) from her rich father": that quantity notably surpasses absolutely grave matter.

Several seem to say nothing about the matter: d'Annibale, II, 257; Aertnijs-Damen, I, 719; Piscetta-Gennaro, III, 253.

Ballerini-Palmieri, *Op. theol.*, III, 311; Lehmkuhl, I, 1115, at the end; Génicot-Salsmans, I, 510, hand down that one can ascend beyond absolutely grave matter.

And rightly indeed. For matter is estimated absolutely grave insofar as the wealth of the injured person is no longer to be considered; but other relative considerations are not thereby excluded. And if you place as the supreme limit the absolutely grave quantity, matter will not be able to be estimated more benignly for the son of an opulent man than for an outsider; for him who by several acts has taken things belonging to several than if he had committed the theft by one act. For in both cases, because there is question either of an opulent man or of a thing pertaining to several, absolutely grave matter alone is considered. Therefore those causes, in these cases, will at the same time have to be affirmed and denied to be lessening or diminishing gravity.

b) Applications or Examples. Again we warn that mathematical ratios are to be used soberly, and that only indications useful to prudent judgment can be gathered from authors. Therefore:

a) If a thief takes disparate objects from one and the same possessor, more is required than if he had taken money or a thing of one species, because the damage is then less felt. Similarly, if small thefts are separated by an interval, St. Alphonsus, III, 530, establishes matter as greater by half than that which would otherwise have been relatively grave, while others require even double. Therefore absolutely grave matter can also be increased if the person was one for whom this matter alone is attended to.

b) If someone steals from several distinct persons, so that each suffers only a light damage, there are those who then wish the matter to be doubled.

If it happens by distinct acts, but from the intention of arriving more securely at a grave sum, this circumstance will scarcely have to be attended to. But with this intention excluded, both the less depraved soul and the more difficult execution bring it about that even the quantity necessary for grave sin is estimated by some up to triple, at least if the thefts are separated by a notable interval. Cf. St. Alph., III, 530; d'Annib., II, 251.

But when there is question of thefts which have been done against several, "the grave measure," says Ballerini-Palmieri, *Op. theol.*, III, 311, "which thereafter in the case must be computed at least doubly, must be taken not from relative but from absolute gravity." In thefts committed to the detriment of several, one can also attend to the disparity of the things taken.

Observe, when there is question of merchants who are accustomed to deceive many by unjust weight or measure, that the matter can at most be doubled. For they sin from the beginning by the intention of committing grave injury.

c) If several have acted from conspiracy (cf. below), relatively grave matter does not seem able to be changed for that reason, since the damage which several have perpetrated is felt no less than if one

had done it; absolutely grave matter seems able to be greater by half than if one had done it in the same circumstances.

d) If without conspiracy each one has acted for himself, the acts remain separated.

e) If others have been moved by someone only by example, the author of the example, as such, violated not justice but charity.

— You will ask how and when grave sin is committed in thefts or damages which coalesce into grave matter?

He who, seduced only by repeated occasion, rather often steals, does not sin gravely in the individual thefts unless he notices that grave matter is being completed by him. And he can avoid that grave sin if he proposes to make restitution soon, so that at least he no longer retains grave matter. - But he who from the beginning wished to do a grave theft or damage sins gravely by that intention; and the individual small thefts contain the continued execution of the same grave sin. - He who, after grave matter has been completed, steals some light thing, either continues the same sin, or commits a new venial sin, according as the theft is judged one act with the prior thefts, suppose a merchant who continues to use unjust weight, or distinct from these, as if, after a watch has been taken away, he steals foods on a new occasion.

On the Right of Necessity. He who, for himself or for another, constituted in extreme necessity, takes another's thing as much as is necessary, does not steal. And he need not restore what has been consumed if he was needy in fact and hope. Indeed, from restoring a modest thing he is morally always exempt. The reason why he can take another's thing is this: that the first destination of goods for the use of the whole human race is not taken away by appropriation, so that nature wills rather that men live from these goods than that they be appropriated and assigned to the lesser utility of the owner. Therefore he who is in necessity can take a thing for himself as though not appropriated. The owner must give the same from charity; from justice he is held only to this, that he not impede the needy man in an unjust way. But it is not unjust for him by a lie merely to dissemble his own things (cf. n. 576). But because the right of taking is bounded by necessity, one who is in extreme need must *per se* ask for the thing before he takes it, nor can he take except as a mutuum or commodatum a thing which he hopes he can afterwards return. The very request can be omitted if the necessity regards a thing determined in the individual, or if he would recoil from the request almost equally as from death. In a thing also of slight price, the owner is not judged to press the obligation of making a loan. We omit as superfluous the controversy about the obligation of him who, when he took the thing, had no hope of restoring, and nevertheless afterwards became richer.

In quasi-extreme necessity, not more can be taken away than the other must give from charity. Therefore a huge sum cannot then be taken.[1] Finally, in grave necessity, this at most can be tolerated: that a poor man who has asked in vain takes from a rich man something modest, as to whose substance the wealthy man is not judged unwilling. Innocent XI reproved, at minimum as scandalous and pernicious in practice, proposition 36: "It is permitted to steal not only in extreme necessity, but also in grave necessity" (Denz. 1186).

We treated the various necessities above, n. 83.

[1] Wherefore a poor man will not be able to steal a huge force of money to recover liberty or to buy very costly remedies. Thus we say with Génicot, I, 502, but insofar as then extreme necessity regularly is not had.

On Hidden Compensation. Hidden compensation is the taking of another's thing but one owed, done without the debtor's knowledge. It will be just if the debt is of commutative justice; if the thing is taken which is actually in the domain of the debtor, therefore not the thing of another which he holds as depositary or borrower-for-use, and the debt is certain, or at least so probable, that it would be assigned to the creditor by a judge. For then the creditor satisfies himself as if in the name of the debtor, or as if a judge attributes the thing to himself. Nor can the debtor be reasonably unwilling, when the denial of payment would be nothing but a useless harassment of the creditor.

On the contrary, if the debtor does not have an obligation of paying, if the judge would not certainly attribute the thing to the one vindicating it, the creditor by taking it would violate the certain right of the possessor. And if hidden compensation were permitted to him, a place would logically be prepared for perpetual war. For by equal reason the debtor could secretly take back what was secretly taken from him. Yet there are approved writers who, distinguishing fact from right, indeed require that there be certainty in a human way concerning the fact on which the debt rests, but are content with a sufficiently probable right of exacting, so that before a judge it could prevail over the contrary reasons of the debtor. Cf. Lugo, *Iust.*, d. 16, sect. 5; Lehmkuhl, I, 1125; Arregui, 318. But they ask, to avoid the danger of hallucination, that nothing then be done without a prudent confessor or another expert and God-fearing man. We shall permit to that opinion its extrinsic probability.

If there were danger lest, on the established day, the debtor could not or would refuse to make the certainly owed payment, anticipated compensation will not wound justice if at the same time the emergent damage and the ceasing profit which the debtor suffers from privation of the thing are furnished to him. - But that compensation lack every fault, a moderate difficulty of obtaining the thing otherwise is required: otherwise that invasion of another's things would easily contain a light injury; and caution, greater insofar as the debtor is more excused, lest the compensation be damnose to the debtor, who perhaps would pay twice. Charity also demands that, as much as you can without proportionate inconvenience, damage to a third party be forestalled, for example, of a servant who would be accused of theft.

The confessor must proceed cautiously in this matter.

§ 2. On Restitution on Account of Real Injury

Principle. Since restitution supposes injustice, restitution is not therefore to be made because the guilty person has been made richer, but because the other has less on account of his own right having been injured by the guilty person. On account of his own right having been injured, I say, or because he has less than he ought to have.

But here it is useful to consider separately the two roots of restitution, so that we may successively ask and attempt to determine what possessors of another's thing, and again what unjust damnifiers, are bound to restore.

I. - On Restitution on Account of Possession of Another's Thing

I. Principle. All things return to this: that possessors, unless they are excused by a just privilege of positive law, should satisfy the real rights of others (i. e. rights in the thing), execute the promises of agreements, and, if they have been unjust, repair damaging injuries.

1. Therefore the possession of another's thing raises questions which directly regard the thing, the fruits, and the damages of him who has the right; indirectly, the execution of agreements to which possession of another's thing has given place.
2. Possession is distinguished into possession in good faith, i. e. here, with an uninjured conscience concerning the dominion acquired, and possession in bad faith, i. e. dominion acquired against conscience.

Theologians moreover distinguish detention in good faith, which can be joined with possession in doubtful faith and can suffice for prescription in conscience. For a possessor can have doubted from the beginning or only afterward; the doubt can be about a derivative title: whether he bought from the owner, or about an original title: whether the thing has been abandoned or lost by the owner, so that he can occupy it or acquire it by usucapion as belonging to no one; he can detain the thing from the beginning or afterward with a conditional intention and one of inquiry and of restoring it to the owner if he is found, or with an absolute intention. Good faith, in the widest usage, denotes concord between intention and conscience.

II. The Possessor in Good Faith. 1. As regards the thing itself:

a) He is not responsible for a fortuitous event.

b) He can acquire by usucapion, and he is permitted to use the privileges of positive law.

Not rarely, on account of those privileges, the very delivery that has taken place to a possessor in good faith, or the inscription of his name in public registers, assigns the thing definitively to the possessor. Cf. 402.

c) He cannot prevent the owner from vindicating his own thing (except when usucapion has taken place); indeed, he must restore it spontaneously.

But what if, in order to recover the price which he himself gave, it were necessary to restore the thing to the seller, the thief? Many permit him to do this, because he does not place the thing in a worse condition.

But if another way is available for recovering the price, it is agreed that this way must be entered upon.

d) He who, by destroying or consuming the thing, has thence been made richer, whether directly, through positive gain, or indirectly, while he spared his own thing: from that advantage, insofar as it is to be attributed to the possessed thing and not to the industry of the possessor, he must make the owner indemnified concerning the thing lost, or, as others wish, restore the value which the thing had when it was being consumed.

e) He need restore nothing to the owner for a thing which he has handed over to another without gain; indeed, as is probable, neither for a thing which he has handed over with gain, as if, for the donation of the thing having been made, the donee out of gratitude of mind sent another gift to the possessor. For the right of the owner draws to itself the thing itself, but not the gain of the possessor.

2. As regards the fruits. Considering the law of nature, a possessor in good faith would have to restore existing fruits or fruits usefully consumed insofar as they were natural, expenses

nevertheless being deducted; but many positive laws establish that a possessor in good faith can simply make the fruits his own.

Thus the Code of Ecuador, 898; Argentine, 2157; Austrian, 330; Belgian and French, 549; Bolivian, 293, 294; Brazilian, 510; Canadian Q., 411; Chilean, 907; Colombian, 964; Costa Rican, 327, 328; German, 955 [cf. nevertheless 2020]; Guatemalan, 519; Helvetic (Civil Code) 938; Spanish, 451; Italian, 703; Lusitanian, 495; Mexican, 834; Dutch, 604; Nicaraguan, 907; Panamanian, 137; Peruvian, 170; Salvadorian, 937; Uruguayan, 649; Venezuelan, 686.

Concerning this acquisition the laws of England and the U.S.A. are silent.

One must attend whether, according to the received interpretation of the law, the fruits are acquired already by their very birth or production, or only by perception; and whether or not the expenses of cultivation are to be paid back by the owner for the fruits which the possessor in good faith has acquired.

3. As regards damages: if you attend to opinions, he is compelled to repair no damages. Yet it seems truer that at least from equity it is required that, by means of the gain received from the thing, the possessor repair the damage which by his own deed, although not voluntary, he brought in. For gain received from the thing is, as it were, a fruit of the thing; damage arising to the owner is, as it were, an expense by which the fruit was received. But fruits are not understood except with expenses deducted. Therefore if the fruit is gathered by the possessor, he must pay the expenses, i. e. repair the damage. Or, if you prefer, having been made richer from another's thing, will he not be moved by a sense of equity to take from the gain for repairing at least the owner's emergent damage?
4. As regards contracts: **a)** he can use the benefit of positive law which confirms a donation or sale made to him; - **b)** if he has sold the thing, since, as seller, he must provide eviction to the buyer who has suffered it, unless the buyer, by an untimely restitution of the thing, has harmed the seller himself. In the rigor of the law, such as ours, by which the sale of another's thing is declared null, he would have to restore to the buyer the price retained as if without title; but because the tribunals themselves are accustomed greatly to consider whether or not the buyer has suffered eviction, he seems able to await the sentence of the judge. If the thing has perished, let him see whether or not he has anything to fear in civil law. If nothing, at least counsel should be given to him that he restore to the owner the price existing with him, as if, unknowingly but in good faith, he had managed this one's business.

Counsel, I say; for we have not dared to press a strict obligation independently of civil law. Many authors indeed solve the case more severely. But they follow the classical guides who were writing while Roman law was in force, by which restitution of the price was commanded. Cf. l. 28, D. V, 3: "For after the senatus consultum it must be said that every gain is to be taken away both from the possessor in good faith and from the robber." Cf. also l. 55 in the same place. Therefore authors distinguish the varied origin of possession. If the possessor bought the thing and sold the same without gain, they agree that the price is not to be refunded to the owner who cannot recover his own thing. But if he has sold the thing with gain (at least non-industrial gain), whether he bought it for less or received it as a gift, then that gain or price must be restored to the owner who cannot

recover his own thing: for the thing is represented by that gain or price; the possessor cannot grow rich from another's thing. Yet neither reason seems efficacious. Not the former: for the representation of the thing by the price cannot vary on account of circumstances extrinsic to the price. For what reason, therefore, is it denied when the thing exists or has been sold without gain, but affirmed when the thing has perished by chance and has been sold with gain? Not the other reason. For from the law of nature only this is had: no one can grow rich unjustly from what belongs to another.

Therefore injustice would have to be demonstrated. Nor, according to the principles of law, can there be imposed on a seller in good faith both the obligation of providing eviction to the buyer and conditionally, if eviction has not had to be provided, the obligation of restoring to the owner the price obtained (cf. e. g. Aertnijs-Damen, I, 751). But once the sale has been made, by no direct relation is the possessor in good faith now bound to the owner of the thing. Nor is he held from unjust taking, since he has not sinned, nor from the thing received, since it has passed elsewhere. The owner can vindicate his own thing where it is, not where it was; but he has no personal action against the possessor in good faith. "Certainly, if while the purchase and sale were being celebrated, the owner had suddenly been present, to each one his own would have had to be restored, that is, the thing to the owner, the price to the buyer; but what afterwards happens by chance does not change the law" (d'Ann., II, 239, note 8, II).

Wherefore we judge it equitable that a possessor in good faith restore to the owner who is deprived of his own thing the price which he can restore without damage to himself, as if he had involuntarily but usefully managed the business of the owner; but we do not think that a strict obligation of justice of acting thus can be gathered from the law of nature.

N. B. As regards expenses, or costs made about another's thing, necessary expenses are to be paid to the possessor in good faith, i. e. those without which the thing would have suffered detriment, and useful expenses which have increased the value of the thing.

Yet the possessor in good faith acted at his own risk. Wherefore for useful expenses attempted in vain he can demand nothing. Merely pleasurable expenses are not to be compensated to him, but by him, if they are separable, they can be taken away.

The Possessor in Bad Faith:. 1. As regards the thing itself:

a) He is responsible for a fortuitous event, unless nevertheless it would have perished by the same identical fortune, or at least, as some benignly permit, at the same time in the owner's possession. Nor does he formally owe anything because the thing, affected by an intrinsic defect of disease or age, has perished.

b) He cannot acquire the thing by usucapion nor use the privileges of civil law,[1] except the prescription of five years, concerning which above, n. 404, 2, c.

c) He must restore the existing thing with all increases which have come forth from the thing and not from the industry of the possessor.

d) If he himself has consumed the thing, or has alienated it in such a way that it cannot be recovered by the owner, he owes the value of this whole thing which was in it when it was consumed in that way naturally or civilly (as money spent). For as long as it existed, it belonged to the owner with its own value. Some benignly permit that only that value be restored which the whole thing had when

the owner would have alienated or consumed it; but this is speculatively false. For the thing is preserved and grows for the owner. Just as he who had impeded the destruction of another's thing would have acquired no title from that to that thing or to its value for himself, so neither does the possessor in bad faith who prohibited the owner from alienating it obtain a right in the greater value of the thing preserved.

2. As regards fruits: he must restore all non-industrial fruits. Yet because, properly speaking, consumable things bear no fruits, the interest of money is not to be handed over to the injured owner as a fruit, but it is enough to restore that interest which the owner himself would have received; while the price of a rented house must also *per se* be restored to him who would not have rented the house.

For one thing must be said concerning the class of money, another concerning the price of a rented house or rented horse. For not less than the thing itself, its use calls out for the owner. But the price of use is the money to be paid for rental. Therefore whether the owner would have rented the thing or not, the possessor in bad faith will be able to make his own only that increase of price which is to be attributed to his own industry. But money does not have a use distinct from taking it up. Hence every fruit of it can be called industrial. Cf. concerning the principle alleged, Lugo d. 17, n. 58 ss.; d'Ann., II, 211.

Some nevertheless contradict that common opinion, who think it enough that the owner be made indemnified (Cf. Lugo, l. c. Piscetta-Gennaro, II, 111).

And often a greater obligation will not be understood by a possessor in bad faith. Wherefore no greater one will then have to be imposed.

3. As regards the damages of him who has the right: the possessor in bad faith must repair all damages which in a confused way were foreseen as going to arise from the injustice. Therefore that possessor owes to the owner: the price of an animal which died from disease but which the owner would have sold before the disease; the gain which the owner would have made from a more opportune sale; the interest which the owner would have received.
4. As regards contracts, *per se* he must provide eviction to the seller [source reads *venditori*; the legal context seems to require "buyer"].

N. B. **a)** Many things will often not be established. Then let him restore the value which the thing had when it was consumed, with compensation of use added, and, if the thing was consumable, with modest interest added.

b) Restitution is owed to him whose certain right of dominion or possession has been violated.

c) Concerning expenses the rules established for the possessor in good faith return.

[1] Unless some civil law wishes to punish negligent creditors, who do not reclaim debts, with this sanction of civil prescription.

What if several have successively possessed the thing?.

He owes the thing before others who has it formally or equivalently, or has destroyed or consumed it. - Then succeeds the robber of the thing.

Each one will owe, before others, the fruits which he has received.

Each one is responsible for damages with which he has cooperated, and this separately or in solidum, according to the rules to be handed down later.

The Possessor in Doubtful Faith:. 1. As regards the thing itself:

a) Every possessor in doubtful faith is bound by an obligation of justice to investigate the truth by effort and expenses which agree with the degree of doubt, the hope of success, and the importance of the thing. With the degree of doubt: wherefore a negative doubt can be despised; indeed even a positive one, if it is slight. With the hope of success: wherefore one can abstain from an inquiry which morally brings no hope of fruit. - With the importance of the thing: greater diligence must be applied to a greater cause. And because the diligence of him who perhaps must inquire at his own expense is graver or more difficult than that of him who is thereby exposed to no positive damage, more money must be spent on investigation when, by spending it, you will gain less, than when perhaps it will have to be deducted from your goods. Thus the finder of a lost thing will be able either to impute to the owner, if he is found, the expenses made for seeking him, or, if he himself has occupied it, to compensate himself from the value of the thing found. Moreover a possessor, at least one not to be blamed, is not bound to take upon himself expenses for removing the doubt which, considering the importance of the thing or the hoped-for fruit, are to be judged truly notable or grave. But he who from the beginning of possession or afterward has been guilty of injury is held more gravely than an inculpable possessor.

b) Once inquiry has been made: 1) he must satisfy the certain right of another or of others, according to the rules for a possessor in good or bad faith, according as he has been innocent or immune from delict, or from the beginning of possession or afterward, by neglecting to inquire, has sinned against justice; - 2) but if the certain right of no one has appeared, while the doubt remains, although many speak more severely about him whose possession was badly begun, he need restore nothing. And he is placed in that theological good faith which, in accommodation to positive laws, permits the thing to be acquired by usucapion.

c) He who, by omitting inquiry, has been the cause that he cannot discover the true owner or restore the thing to him who has the right, will have to destine it to the poor or to the common utility. - If that is not established, although many respond more severely, an uncertain obligation will not be able to be pressed.

d) He who, doubting concerning his own right, has despoiled of his possession a possessor who is not in bad faith, must *per se* restore the thing to him and repair damages. Cf. what was said concerning hidden compensation, n. 639.

e) We cannot make the condition of him who has the right worse. Wherefore the possessor must apply ordinary diligence in preserving the thing and in gathering fruits from it, nor can he dispose of the thing, unless the hope of certain truth has vanished, or unless, for avoiding damage or using an occasion of gain, the thing had to be usefully expended, with the intention of refunding the utility to the owner if he appears.

N. B. He who by an unjust action has been the cause of the doubt must himself bear the expenses for removing the doubt or discovering the right. Except if that difficulty was not foreseen even in a

confused way. On the other hand, he who is not to be blamed will impose the expenses on the owner by right and merit.

2. As regards fruits and connected gains, the legal privilege of acquiring fruits does not belong to the possessor in doubtful faith, as such. Wherefore, with the principal thing, just as other advantages of the thing, they will have to be restored insofar as they exist, or even insofar as they have been consumed without good faith. Except, however, those which are owed to his own industry.
3. As regards damages: he must make good the damages who, by acquiring in doubtful faith, has made the condition of him who has the right worse, or who has neglected to inquire.
4. Nothing special is to be added about agreements and expenses.

You will ask how far it is lawful for us to acquire a thing from a possessor in doubtful or bad faith.

We are prohibited from occupying or acquiring anything in doubtful faith with the absolute intention of possession. But with a conditional intention, complicity being excluded, we are not prohibited from acquiring a thing even from a possessor in doubtful or bad faith, if we do not seem to make the condition of him who has the right worse, and if we take on a positive obligation of seeking the one who has the right and satisfying him. Then, while the doubt perseveres, although many command partial restitution, nothing strictly seems to be owed.

But if our acquisition must be charged as probable complicity in another's injustice, this action will be unjust, unless that complicity itself is excused by a grave reason. After the fact, if the matter cannot be investigated, there will not be certainty about the obligation of restitution.

II. - On Restitution on Account of Unjust Damnification

Principles. 1. An unjust damnifier, as such, must *per se* restore as much as the damage which has followed or has been unjustly inflicted. That quantity will have to be estimated both from the quantity of the right, and from the thing taken away, and from emergent damage and ceasing gain.

2. But what has happened beyond prevision, even confused prevision, since it has been invincibly unknown, is exempt from obligation as involuntary.
3. It can also happen, in a lighter matter, that condonation by the damnified person can be presumed.

Corollaries. 1. To him who had a right in a thing actually existing, its whole value must *per se* be restored. But if he had only a right to a thing, for example from money lent, or the thing was present only in hope, for example a future crop, a prize in a contest: an estimation of the hope itself must be made, according to the greater or lesser certainty of obtaining the thing. In the absence of a better indication, where there was solid probability, for example of carrying off a prize, the damage will be able to be estimated at half the value of the thing. But where it can be done, it will be better to enter into an arrangement.

2. Whatever fruits (properly and improperly so called) the owner himself would have obtained, the author of the damage must restore. But fruits will always be understood with expenses

deducted. Wherefore, since today a fruitful investment of money is to be presumed, almost always not only are the fruits of the damaged fruitful thing to be restored, but also, for the value of any destroyed thing which had to be supplied by another, a certain civil fruit will have to be restored. Yet that presumption can be destroyed by a contrary fact. That fruit will have to be estimated from the value of the hope, so that a greater amount is to be paid to a banker conducting prosperous affairs, but a lesser amount to him who conducts no business or whose condition of fortunes is unstable. But since the circumstances which ground the estimation of damage are often unknown, and the inquiry itself cannot remove the doubt, where there is place neither for composition nor for transaction, it will be enough to restore the thing with the customary interest of an entirely safe investment. For the owner either would have invested the money in this secure way, or would have sought a greater fruit, but at his own risk: by the interest of a safe investment that hazard is compensated to him.

3. A modest alms extorted by fraud, on account of presumed condonation, is not to be restored. But a large one, by him who lied about poverty itself or necessity, will indeed have to be restored. Many judge that the option then made of restoring it to the owner or to true poor persons remains. Falsely alleged probity is not thought to generate anything except an accidental error, which does not *per se* seem to stand in the way of the value of the donation.
4. He who has taken away a thing which is indeed fruitful but of small value and for which another is easily substituted seems to satisfy by restoring the thing taken away. Thus he who has stolen an ordinary hen generally need not be solicitous about restoring the eggs. For the willing owner had an easy supply of obtaining a similar hen; and the value of the hen is so modest that no civil fruit of the money which is necessary for buying the hen is to be thought of.

Yet it is necessary that the owner have noticed the matter. If not, he had no supply for substituting another hen for himself, and the eggs, today of a price not to be despised, which the hen secretly taken from the owner would have laid, would be owed to the owner.

Summary

I. One must begin from this principle: since private persons, in their mutual relation, are equally, as such, inviolable, and this independently of merit or demerit, **a)** none can be assumed by another as a means for himself; **b)** no evil of one's neighbor can be intended or chosen, but only, on account of a just cause, permitted; **c)** a conflict of rights cannot be had except about goods which, by first destination common, can pass from one person to another.

II. He is guilty of injury who takes away from someone, not freely consenting, the good of supernatural grace, of truth, of the use of reason, of reputation. Therefore he is injurious:

1. Who has induced someone to sin, or has prohibited him from entrance into the novitiate or from profession, not by mere persuasion and example, but has efficaciously procured this by fear or fraud: he must indicate apt remedies and repair other damages.
2. Who has taught errors, especially practical errors; for speculative ones are less damaging *per se*.

3. Who by fear or fraud has intoxicated someone not consenting, or by an injection of morphine has deprived him of rational life in sickness.
4. Each person has a right that he be esteemed and treated according to his own innate or acquired goodness. That right is violated by rash judgment, detraction or calumny, and contumely.

a) Rash judgment is an interior but firm imputation of guilt on account of indications which are known not to be sufficient. Wherefore, without an evil affection toward the person, it is scarcely committed. And it is judged grave against justice if it is concerned with a gravely defaming guilt.

Mere suspicion, or begun assent, and doubt, or suspension of assent, since they do not take away from the mind of the one suspecting or doubting every good estimation of one's neighbor, even if they are rash, are judged venial by their genus.

b) By detraction and calumny (which here is the false narration of a defaming thing) reputation is taken away in whole or in part, which is opinion or estimation concerning another's excellence. There is distinguished connatural and common reputation, by which one is immune from reprehension, and positive or special reputation, which one acquires by good merit. To the former every human being *per se* has a right; to the latter, only he who has merited it. For common utility itself requires that reputation be preserved whole for each person, and not perish on account of an accidental defect.

There is distinguished direct detraction, which is intended or chosen, and indirect detraction, which is actively permitted; formal, or blameworthy, and material. Detraction which is intended or chosen by a private person is always unjust; but proportionate utility excuses its active permission; and the good of reputation is situated in the high dominion of public power.

The gravity of detraction is to be estimated not from the thing narrated but from the consequent detriment of estimation. To narrate another's hidden crime to one prudent man is not judged grave *per se*. Besides a defect of advertence, also modest credence given, or a certain attenuation of the thing imputed, can remove grave detraction.

But charity can gravely forbid the revelation of a crime which is not opposed to justice.

Reputation is to be restored by praise of the person, by honor exhibited, and also, if the detraction was lying, by open retraction, before the immediate hearers, and also, *per se*, before the mediate hearers. He who in good faith is excused from fault must nevertheless impede the sequel of his action from justice, unless he is excused by a relatively grave inconvenience. The obligation of restitution can be taken away by impotence, condonation, reputation recovered, compensation of the injury, or danger of a greater evil.

c) Contumely is contrary to honor. Honor is a testimony concerning another's excellence or goodness. Therefore contumely will be a signification of contempt by words, writings, deeds, sometimes by the mere denial of honor.

It not only saddens one's neighbor and thus is opposed to charity; but it also injures, in the opinion of men, dignity itself or the title of honor, and besides, in the offended person himself, spirit and confidence for acting. Wherefore it is an injury *per se* damaging. It is mortal by its genus, whether on

account of an affection of grave contempt or hatred, or on account of grave dishonoring: this can vary according to the quality of the sinner or of the dishonored person, so that a parent or Superior can even without sin need certain reproaches. The species does not seem to vary on account of the excellences despised. Contrary, therefore, to what Molina thought, *De iust.*, tr. 4, disp. 46, not charity alone but also justice, independently of a simultaneous wounding of reputation, requires restitution of honor by acknowledgment of excellence, petition for pardon, etc., unless the offended person, by himself or through a judge, has taken vengeance. Contumely, in the concrete, is judged to be a graver injury than detraction, because by external treatment it seems as it were to complete detraction.

III. He is injurious who has injured the body of his neighbor.

1. Direct killing by private authority is intrinsically illicit; as is mutilation itself, unless it is directed to preserving the body or temporal life. By the consent of the patient the note of injustice can be removed, but not another malice. Grave cruelty in execution brings in a new species of ferocity. Accidental homicide or mutilation is imputed insofar as they were foreseen as probably going to follow from an action which, on account of such danger, was prohibited by natural or positive law.

Corollaries. **a)** The intrinsic malice of homicide and suicide infects the duel, i. e. a contest of two or a few undertaken from agreement, or from a preceding pact, with lethal arms. A pact, if it is freely entered upon and is not compelled by another's provocation, removes injustice. But the evils foreseen from a denied duel in no way excuse the duelist, since immunity is sought from the evil act itself; nor does fear from censure render him immune, lest it could commonly be eluded. Cf. I, 220.

A duel is punished **a)** by excommunication simply reserved to the Supreme Pontiff, which from c. 2351 strikes *ipso facto*: "those perpetrating a duel or simply provoking to it, or accepting it, or furnishing any assistance or favor, and also those watching it by design and permitting it or, as much as is in them, not prohibiting it, of whatever dignity they may be"; - **b)** by privation of ecclesiastical burial, which affects those who, without a sign of penitence, died in a duel or from a wound received from it; - **c)** by infamy of law, by which duelists and their seconds are marked.

b) To exercise embryotomy or craniotomy upon a fetus certainly or probably living is intrinsically illicit, since it is the certain or probable (by probability of fact) homicide of an innocent one, who, while he is developing in his own place, cannot be compared with a materially unjust aggressor.

Canonically, homicides and cooperators are irregular from delict (c. 985, 4°); a church is violated by a notorious delict of homicide or by an injurious and grave shedding of blood (c. 1172, § 1, 1° and 2°); a cleric legitimately condemned for homicide must be degraded, while a layman is *ipso facto* excluded from legitimate acts and from any function which he had in the Church.

2. Restitution. On account of a wound or killing there is owed to the injured person himself or to the heir: **a)** that compensation of the injured body which the judge has defined; **b)** compensation of foreseen spiritual damage through suffrages of which the victim was deprived; **c)** compensation of temporal damage: expenses of sickness, emergent damage or ceasing gain; not, however, funeral expenses, which would always have had to be made. To the wife and children certainly only those aliments must be restored by which they are deprived through that killing, since as regards the remaining patrimonial damage the killing is not injurious to

the family. Nor is anything owed to creditors, since the debtor is not the thing of the creditor; nor to an insurance society, for whose utility the killing was not prohibited. - Nothing is owed from justice if before death the wounded person remitted all things, or if the wound was inflicted in a duel to which the killer did not compel the other unwilling person.

3. The direct procurement itself of abortion, i. e. the expulsion of an immature fetus, is never licit. For if the fetus is animated, a lethal wound, through abortion, is inflicted upon a human person; but if it is provoked in the first days, so that more probably a rational soul is absent, the character of malice against nature is shared. But when the danger of a dying mother is imminent, abortion would too late be attempted for saving the mother herself.

But the acceleration of birth will be licit as often as in this way the life of the infant is better provided for, or at the same time the life of both infant and mother, who is necessary to the infant, is provided for.

Those procuring abortion, the mother not excepted, incur, once the effect follows, excommunication *latae sententiae* reserved to the Ordinary, "and if they are clerics, let them moreover be deposed" (c. 2350, § 1). Those provoking abortion, once the effect follows, and all cooperators are also irregular from delict.

But indirect procurement of abortion is excused by a grave and proportionate cause.

Before present necessity, it is not lawful to cut out an ectopic fetus; when the necessity of saving the mother is urgent, that excision today cannot be condemned as certain. Nor is it established, unless probable baptism is excluded by this way, that the use of electric force or of an injection of morphine is prohibited more than excision, since, by way of one thing, that which can be compared with an ulcer and the human ovular content are destroyed.

4. A surgical operation, suppose a Caesarean section, which is necessary for procuring sufficiently certain baptism for the infant, must *per se* be undergone by the mother, even with her own danger. She is not bound to undergo that danger for preserving the temporal life of the offspring. But the mother is to be gently induced to obey the counsels of an upright physician. Once the mother is dead, Caesarean section must *per se* be performed, even for extracting an immature fetus who is hoped to be able to be baptized. But prudence today prohibits clerics from direct intervention.
5. He also is injurious who does not hesitate to harm another's health, for example by communication of a grave disease.
6. It is lawful to use necessary force for repelling an aggressor whose aggression is morally present, even if the defensive action certainly brings with it the effect of the aggressor's death, provided that a proportionate good, such as life, integrity of members, chastity, or a temporal thing of sufficient moment, either absolutely or with attention to the injured person, is placed in danger.

Vengeance differs from defense with the moderation of inculpable defense, because vengeance takes punishments after the perfect injury. In a civilized society this is reserved to public power, if you except certain medicinal punishments which are not very afflicting.

7. He who by force or fraud has extorted copulation from a woman is injurious to the woman, and, if she was married, also to her husband; the adulterer and his accomplice are injurious to the spouse not consenting.

To a girl for whom, through defloration, he has made marriage more difficult, the seducer must compensate that damage according to his powers: either by taking her willingly as wife, or by supplying a dowry. Reparation through marriage is more adequate, *per se* to be desired if the marriage can be happy; indeed then it must *per se* be imposed upon the promiser or deceiver. The expenses of supporting the offspring must be borne by the seducer alone, always preserving the duty of piety by which both parents are held *in solidum* to support the infant according to the condition of the mother.

Simple fornication is often not damaging. Fornicators take on the common burden of supporting the offspring. Except the prostitute, who is judged to have assumed that burden (otherwise rare).

Adulterers are held to repair according to their powers the damage which *per se* follows from supposed offspring, and probably they are in an equal place for that obligation. That damage is contained in the aliments and customary gifts or goods which legitimate offspring are accustomed to receive from parents or from ascendants. Greater detriments to be avoided bring it about that the adulteress scarcely ever has to confess the crime; and the other also, whether by too great difficulty or by doubt about his own paternity, is not rarely excused from the obligation.

An adulterine son is to be treated as a possessor in good faith, nor should he believe his mother revealing his origin.

Appendix. — Ask how far public power can dispose concerning the personal goods of citizens, and what must be observed concerning the law of war.

I. Not even public power can ever directly injure the innocent, even if it wished to take vengeance concerning the delict of others; but on account of the necessity of human society, God gave to it the faculty even of exacting capital punishment, the juridical order being preserved, unless the public safety has dispensed from preserving it.

II. It can also, when another way is lacking, declare war for its own defense, or for exercising vindicative justice. On account of a merely probable right, war cannot be brought upon anyone unless he has refused a friendly composition. And a competent satisfaction offered by the other party must *per se* be accepted. In defensive war it is enough that the committed injustice is not established.

Concerning the justice of war, common subjects indeed are not bound, but learned men and theologians or voluntary soldiers *per se* must inquire.

Those who are compelled to have a part in an unjust war must abstain from hostile acts, and only if they are personally invaded by an enemy in such a way that he is unwilling to give life to one surrendering himself, can they defend themselves.

In a just war, all those things are lawful which are necessary for the end of the war, and are not prohibited by natural law or by agreements. Faith given to an enemy must *per se* be kept. But reprisals can be exercised only against guilty persons or against goods, if it is necessary.

Since he who pursues his own right does not thereby make his condition worse, public power will be able to convert war into a duel of a few.

Once war has ended, restitution of expenses and of things taken can be sought on account of suitable satisfaction. And a treaty of peace, although signed under compulsion, must be observed, unless it has been vitiated by manifest inequity.

Even in an iniquitous war, since common soldiers do not seem to act from conspiracy, they are bound to repair only the damages which have been done by their own hand. The obligation of the commander or of public power is graver.

Irregularity from defect of mildness has been removed by the Code.

Article II: On Real Injury

I. What Injuries Are To Be Considered. An injury inflicted upon goods can be more damnifying or lucratively injurious; it can be committed secretly or with force applied; the thing which is the object of the injury can be sacred or profane. Hence various characters of injury are to be distinguished juridically, for example as regards reserved cases, which nevertheless, as injuries, are of the same moral species.

It is manifest that personal injuries (as in robbery), reasons of sacrilege, or scandal can accede.

Juridically, theft is the hidden taking away of another's thing, while the owner is reasonably unwilling. Hidden, i. e. without force; of another's thing: taken away at least according to law; unwilling: as regards the substance; reasonably, i. e. with all circumstances weighed, the owner or the one having the right being unwilling.

He does not steal who, in extreme necessity, for himself or for another takes as much as is necessary; or, in quasi-extreme necessity, as much as the other would have to give from charity; or in grave necessity, he who, after a fruitless petition, has taken some modest thing.

Nor does he steal who, using hidden compensation, without the debtor knowing, takes away another's thing, but one owed to himself. The debt must be of commutative justice, sufficiently certain that it would be assigned to the creditor by a judge. There is need of moderate difficulty in obtaining the thing otherwise, lest the invasion of another's thing be condemnable as a light injury; and care must be taken that the compensation not be damaging to the debtor.

Charity moreover commands that the damage be avoided which another, for example a servant who would be accused of theft, would suffer.

II. Gravity. Theft by its genus is grave, as contrary to charity among men. Yet light matter brings it about that the injury is indicated as morally imperfect. Therefore that the injury be light, it is necessary that at the same time: **a)** it bring no grave privation to the injured owner. Matter is estimated as relatively grave which deprives someone of a seventh part of weekly income, in such a way, however, that for him who has no family to support, the quantity can be doubled. But matter modest in the aspect of theft can, as damnifying, become grave, as if it takes away a necessary instrument of work; - **b)** nor is the thing taken away in itself, i. e. in such a defined society, of universally notable utility; - **c)** nor is the injury apt to have a grave repercussion upon common security. By the two latter considerations absolutely grave matter is defined. Before the war, by a perhaps more benign opinion, this was estimated at one hundred lire or coins of similar common use (100 marks, pesetas, shillings, l., dollars, florins). Although now, in regions where paper money

alone is already used, this is rather distant from the metallic money to which before the war it was equivalent, nevertheless the third consideration seems to prohibit us from estimating the grave quantity according to the value of gold money. Wherefore we would not think that the absolutely grave quantity can be increased beyond double or triple, even if the prices of most things are more than tripled, and we judge that it must be estimated at about 100 lire, not however reprehending those who think that it should be increased, for example, by half.

Consideration of absolutely grave matter comes into use when there is question of physical or moral persons whose daily income is represented by an absolutely grave quantity, or by half of that sum, where there is no burden of family.

A more benign estimation of matter is permitted: **a)** on account of personal or real considerations which render the injured person less unwilling; **b)** on account of the mode of injustice, which, creating difficulty, would lessen the danger of many abuses. Thus, on account of the former considerations, a greater quantity is required in exposed things, in things which the owner wholly neglects, and in thefts of connected persons. Wherefore they admit that for a wife and children of the family the customary matter can be increased at least double, but for a religious, if there is question of the things of the monastery, at least by half. Poor persons who, for their own uses, gather wood in forests, sin more lightly, provided they do not harm the forests; domestic servants also sin more lightly, not as regards money enclosed in a chest, but in other things in which the reason of frailty in part excuses the delict. On account of the other consideration, a greater quantity is required in small thefts which coalesce. Then, according to the cases, they permit that the matter be increased by half, or double, or that absolutely grave matter alone be considered.

III. Coalescence of Small Thefts. Moreover small thefts and modest damnifications coalesce: **a)** on account of the unity of the injured subject, unless, with the smallness of the thing or the interval (15, 30, 60 days) considered, the former things have almost fallen from memory when the delict is repeated. Rather slight small thefts in consumable foods almost do not coalesce; - **b)** on account of the moral unity of the action, even if the things pertain to several. Yet it is not established that mere damnifications done to several coalesce; - **c)** on account of the unity of intention of him who intends to steal a great value through several minute things; - **d)** on account of the unity of collection, if a great quantity is morally preserved; - **e)** on account of the unity of conspiracy of several.

Moreover grave sin is committed from the beginning, if the intention of stealing or damnifying gravely was then had; otherwise, when the guilty person notices that grave matter is being completed and does not conceive the proposal of restoring. He who, after grave matter has been completed, steals some light thing, either continues the same sin, or commits a new light one, according to the distinction or unity of the acts.

If a pious work is injured, relatively grave matter will have to be estimated from the detriment of the end.

IV. Restitution on Account of Real Injustice, at Least Material Injustice. 1. What possessors of another's thing must restore.

Principle. Unless they are excused by the privilege of a just law, possessors, as such, must satisfy real rights and execute the promises of agreements. If they have been formally unjust, they must repair damaging injuries. Hence:

a) A possessor in good faith can use the privileges of positive law; unless he has acquired the thing by usucapion, he must restore it in the state in which it is found, when another's right has been established. If he has usefully consumed the thing for himself, he will have to restore the utility received from the thing itself, at least so that the owner recover the value which the thing had when it was consumed. - Say the same about fruits received from the thing; yet often, from positive law, a possessor in good faith can make these his own by perception. - If you attend to opinions, he is compelled to repair no damages. If he sold the thing, since as seller he will have to provide eviction to the buyer; as possessor of the price, he is at least to be persuaded to restore to the owner deprived of his thing the price existing with him.

b) A possessor in bad faith is responsible for a fortuitous event, unless the thing would have perished by the same identical disaster, or at least at the same time, in the owner's possession; - he cannot use the privileges of positive law, except prescription which, independently of good faith, has a public cause; - he must restore the thing with all non-industrial increases; - concerning the thing consumed or alienated, he must make the owner indemnified; - indeed he must restore the value which the thing had when it was consumed; - he must repair all damages foreseen at least in a confused way; - he must provide eviction to the seller [source reads *venditori*; the legal context seems to require "buyer"].

Observe nevertheless that fruits of consumable things are not properly such.

Since many things often are not established, let the value of the thing be restored as it was when consumed, with compensation of use added, and, if the thing was consumable, with modest interest.

If several have successively possessed the thing: he who has it or destroyed it owes the thing first; the robber succeeds; each one first owes the fruits which he has received; each one owes damages (in solidum or separately) with which he has cooperated.

Necessary or economically useful expenses can be deducted from the quantity to be restored.

c) A possessor in doubtful faith must investigate the truth from justice with that care which agrees with the importance of the thing, the degree of doubt, and the hope of success.

Once inquiry has been made, he must satisfy the certain right of others, according to the rules of a possessor in good or bad faith, according to the case. If the certain right of no one appears, while the doubt remains, he need restore nothing; and if he himself, or his author, began to possess in good faith, he will be able to acquire the thing by usucapion according to the path of positive law. - But he who by his negligence has been the cause why the thing cannot be restored to the owner, which he can occupy only as belonging to no one, will have to destine it to common utility.

He who, doubting concerning his own right, has deprived a possessor who is not in bad faith of his possession, must be charged with certain injustice. And in doubt we are prohibited from making the condition of him who has the right worse. Nor are real fruits or connected gains acquired by a possessor in doubtful faith.

2. What damnifiers must restore. An unjust damnifier must restore as much as the damage which from his action has been unjustly inflicted.

Except damage not foreseen or, at least from presumption, condoned.

Wherefore, if merely a right to a thing or to hope has been injured, the quantity to be restored must be estimated from the value of the hope; in the absence of a better computation, let it be estimated at half the thing.

Fruits are to be restored, with expenses deducted. Yet it will be enough to restore a thing of modest value and for which another is easily substituted.

On account of presumed condonation, a modest alms extorted by fraud is not to be restored. Great liberality must be restored at least to true poor persons.

Chapter III: On Unjust Cooperation

Reason of the Order. - Since already before, n. 129 ss., we treated cooperation in general, and at n. 132 we showed how commutative justice can be injured by material cooperation itself when not excused, it is lawful for us to dispatch this argument rather briefly. First we shall describe the various modes of unjust cooperation; then we shall have to treat the consequent obligation of restoring.

§ 1. Various Unjust Cooperations

Notions. 1. Concerning how formal cooperation differs from material, cf. n. 129.

They are accustomed to enumerate the modes of cooperation in these little verses:

Command, counsel, consent, flatterer, recourse.

Participant, silent one, non-resisting, non-manifesting.

Thus six positive and three negative modes of cooperation are alleged.

I. - On the Positive Modes of Cooperation

I. On One Mandating or Commanding. 1. To him are imputed all damages which have been inflicted by the commanded action; and those also which, by a morally necessary nexus, are joined with the execution of the mandate. For the one mandating is truly the principal author.

2. These are imputed, provided it is established, as is to be presumed, that the executor was moved morally by the mandate to act unjustly.

The unjust things, moreover, which the mandatary has done from his own malice or vincible error are not imputed to the one mandating, as such. Yet if by the mandate a power was conferred without which the damage could not be inflicted, the one mandating can be held by another title of cooperation.

3. The causality of the mandate and therefore its imputation is suppressed by a revocation which becomes known to the mandatary before execution. Yet if the mandatary was instructed or excited by the one mandating, this force of counsel, even when the mandate has been revoked, subsists. But if from a fortuitous event or another's malice the revocation was hidden from the mandatary, the one mandating remains obligated toward the injured person. But he who has maliciously impeded the revocation will have to restore the damage to the one mandating, and easily, with respect to the injured person, contracts the principal guilt of the unjust action.
4. The one mandating is not bound *per se* to repair the damages which the mandatary himself has suffered, unless he has unjustly compelled him (by force and fear or by deceit) to inflict the damage.
5. Finally, damages alien to the mandate which are going to happen to a third party, the one mandating is not bound to make good, if they could morally have been avoided.

On the Counselor. 1. A counselor, unless he has efficaciously revoked the damaging counsel, must *per se* repair the damages proceeding from it, both those which have been inflicted on another from efficacious counsel, and those which he who accepted the counsel suffered, if he deceived this one by deceit or blameworthy error. But a persuader of a lesser evil to one who otherwise cannot be turned away from perpetrating a greater seems to many immune from injustice. Cf. what was said n. 128.

Moreover there is distinguished simple or naked counsel, without added motives, and counsel clothed with reasons; doctrinal counsel, by which some knowledge is communicated, and suasive counsel, by which the will is persuaded.

In doctrinal counsel the force of a principal action is easily present, as if an unlearned person, deceived by you, applied a lethal remedy, while suasive counsel contains secondary cooperation.

2. Especially in this matter those are to be blamed who profess special expertise and, without competent knowledge or sufficient investigation, rashly give counsels to those who can prudently trust them. This is especially to be attended to by those who, as confessors, advocates of causes, notaries, and physicians, are accustomed to give counsels by office. But a good counsel which pertains to the execution of a promised function is owed from justice. But he who has given counsel as a friend must nevertheless take care lest his action produce damaging effects. - Excuses in this matter are usually sought either from a deficient deliberation of the agent, or from the levity of the one believing, who has relied on things said in passing. In the latter case neither are damages to be repaired, nor is the counsel to be retracted from justice.

3. Mere persuasion of a depraved action imposes no obligation of justice toward the executor. But he who by his counsel has induced another to inflict damage, and has foreseen this, must repair that damage as its secondary cause. But counsel given to him who was already determined toward evil is not damaging *per se*. I say *per se*: for new counsel could have damagingly influenced perseverance in the evil proposal. But he who by depraved counsel truly moved another to act is not therefore excused because, after him, others have given or would have given counsel.

4. Efficacious retraction of the counsel removes that imputation. Here simple or naked counsel must be distinguished, which is retracted by simple revocation; counsel clothed with reasons, which is retracted only by new reasons being adduced; and doctrinal counsel, by which the mode of execution, which otherwise would have lain hidden, has been indicated: that is not retracted unless you have impeded the execution itself or at least have timely warned him who is going to suffer damage so that he can guard himself against it.

III. - On One Consenting

1. Notions. Those are here called consenting who, by joined votes, establish and decree something. Those who have constituted an unjust work in this way must repair, at least in part, the damages thence following according to the quality of the work and the efficacy of their cooperation. The work, moreover, can be a law, a judicial sentence, a decree, a counsel, the conferral of an office, or a mandate. Again it can happen that the votes were given by formal compact, so that they had

authority over the votes of others; and it can also happen that they were given without mutual relation, by separated wills. Therefore:

2. Rules. a) Those who, from conspiracy, i. e. moved by an express or tacit compact, have given a vote, are the authors of the damage by one morally single action, so that the whole damage is imputed to each; i. e. they are held *in solidum*, as will be confirmed below, n. 671.

b) Those who, without conspiracy, gave a vote necessary for the damage, as if, for obtaining a law, as many votes as were given were required, likewise bear the imputation of the whole damage, according to the common sentence.

c) If, beyond the required number, votes have been given without conspiracy, writers go off into various opinions.

By several more recent authors all voters for an unjust law, decree, or judgment are condemned to restitution. These seem to us to think rightly. For the evil or damage is effected not by the votes as individual votes, but by the sentence, decree, or law, which is the common work of all who vote. Those consenting, therefore, must be compared with men who, more in number than was necessary, have accomplished one damaging work (suppose the carrying off of a chest).

Conspiracy being set aside, these must divide the damage among themselves by a proportionate part. By a proportionate part, i. e. by a man's share, unless unequal force of cooperation is demonstrated.

And according to that opinion, the mode of voting, whether simultaneous or successive, public or secret, does not change the obligation.

The more common opinion, however, is accustomed to distinguish these things.

It pronounces that those who at the same time, for example by rising, have given their vote are guilty of the damage *in solidum*. If they have voted successively, it obligates *in solidum* only those whose vote was necessary. For they gave a cause necessary for the whole damage; but after them the matter was morally completed. Therefore, according to the common sentence, those who afterwards acceded are *per se* dispensed from restitution: their accession was not damaging, unless the greater number became the cause why, for example, the law was sanctioned by the senate or by the king. But if, because the votes were secret, efficacious votes cannot be distinguished from inefficacious ones, each is condemned for the proportion of the doubt.

It was the opinion of some that, on account of the doubt, each should be excused. Ill. D. Waffelaert, *De Iust.*, t. 2, n. 323, deservedly said that this opinion wanders from common moral sense, so that St. Alphonsus, l. 3, n. 566, called true the opinion which obligates at least to the proportionate part, to be paid for the doubt.

If another consideration is lacking, that proportionate part will be a man's share. Afterwards St. Alphonsus, *Homo Apost.*, tr. 10, n. 50, obligates each one according to his proportion to repair the damage; but to the whole if the others do not restore. Lugo too admits this necessity of restoring the whole if the others do not restore, *Iust.* d. 19, n. 85.

You should observe, therefore, that in a secret ballot the votes which the more common opinion has as the only efficacious ones are defined not by the order in which they were given but by the order in

which they are proclaimed. But each one who knowingly gave a vote consented that his vote should exercise this efficacy.

Whose votes, however, were first pronounced is not known, unless they can be recognized by a special mark having been added. Thence comes that doubtful efficacy of the individual votes, on account of which the more common opinion obligates all for the proportion of the doubt, or most often by individual men's shares.

Finally, if votes are given openly but in a revocable mode, then all are held for the damage, because all the votes, up to the last, were efficacious. So Carrière, *De Iust. et iure*, 1188; Tanquerey, 528, who, however, here omit to declare whether they impose an obligation *in solidum* or a divided one.

3. Special things to be noted. a) He who, by force of office, and therefore from justice, was bound to give a vote, can already by the very omission of the vote sin against commutative justice.

b) If the matter admitted by the votes was not intrinsically evil, the necessity of averting a greater evil can remove the very stain of injustice from the voting.

c) If the votes were only consultative, the efficacy of the counsel is to be weighed. If this is demonstrated, those things which were said about consent in a decree will return concerning consent in counsel.

IV. - On the Flatterer or Adulator

He can be held for damages by a twofold reason: insofar as, through praises, blame, reproach of cowardice, and adduced human considerations and advantages, he has efficaciously impelled someone to inflict damage; or insofar as by similar arts he has impeded restitution. He can decline the obligation by an efficacious revocation.

V. - On Recourse or the Receiver

While he offers security either to an evildoer or to things carried off by robbery or taken away by theft, he will be held for damages: a) insofar as he moved the evildoer to perpetrate the crime; b) insofar as he supplied the means of executing the crime, which the other used; c) insofar as he did not make restitution or impeded it.

That cooperation, if it was material, can be excused by grave damage.

He who, by hiding a man or defending him from magistrates, has freed him from penalties, cannot be accused of injustice, although he can sin against charity owed to other citizens or to the state. Yet at the same time, according to his powers, he must effect that the protection of an unjust man does not stand in the way of restitution nor otherwise become damaging.

VI. - On the Participant

A participant can participate either in the booty or in the bad action itself.

If in the booty: he must be treated as a possessor of another's thing, and indeed as a possessor in bad faith, if he knowingly and unjustly received a part of the booty.

But if, in circumstances in which he cannot escape the stain of injustice, he has participated in the unjust action, he must repair the damages of which, either by acting or by cooperating, he was an

efficacious cause. Yet immediate participation must be separated from mediate participation. One participating immediately, or committing the unjust thing himself, violates a negative precept unless he is excused by the right of necessity; one participating mediately omits the positive precept of taking care lest our action bring damaging effects: wherefore he is excused by every detriment which is notable in itself and relatively. - Finally, he who truly doubts concerning the damage inflicted or concerning the efficiency of his action, when the doubt perseveres after sufficient investigation, strictly owes nothing, since no one seems to be despoiled of his thing on account of an uncertain obligation.

What if several have given a cause of damage efficacious *per se*, yet in such a way that it is unknown which of the several was truly the author of the damage? For example, two or more gave counsels: by which of them the author was moved is not known; two at the same time, without conspiracy, by firing a gun, killed or wounded a man, but it is not known which did it; two or more approached the same wife and offspring is born certainly adulterine. For if the husband himself also approached, so that perhaps the offspring is legitimate, the damage itself will not be established.

This matter is not outside controversy. From the principles it must be said as follows. Those who acted conscious of future confusion consented that the damage should be effected by one morally single action, as one which cannot be distinguished. Wherefore they will have to bear it by a man's share. But he who was ignorant of this is held only by an uncertain obligation. Cf. St. Alphonsus, l. 3, 658.

II. - On Negative Cooperators

On Negative Cooperators. 1. They must by restitution repair the damages which they themselves would have impeded by the action unjustly omitted. But officials placed over taxes do not seem to be held by justice to exact fines.

2. But if it is not established that some damage would have been impeded, no restitution will necessarily have to be made. But in doubt concerning the quantity of the damage, justice is satisfied if the least certain quantity is returned. Cf., however, here immediately below, 3.
3. If several who ought to have acted omitted the action from conspiracy, all will be held for the damage *in solidum*.

If without conspiracy, nevertheless each, according to Lugo, d. 19, n. 108, will be held *in solidum* if by his action he could have impeded the whole damage either immediately or mediately, by determining others who had previously abstained.

He gives the reason because each was a total cause. And add: a necessary one, since, with one acting, the damage would have been impeded. But if the action of one was foreseen as useless for impeding the damage, Lugo nevertheless, l. c. nn. 110-112, obligates each to act from justice, because the action of one suffices to remove the excuse of inability by which the others would contend that they were freed from the obligation. For with one acting, the others by their cooperation could impede the damage. That reason seems rather subtle.

§ 2. On the Restitution of Cooperators

I. - On the Measure of Restitution

I. Principle. To whatever whole damage to be effected, or to whatever part of damage to be effected, each has unjustly and efficaciously contributed, he must repair that to the injured person, yet in such a way that the less principal cause has recourse (*ricorso*) against the more principal cause, from whom therefore he will be able to reclaim what has been paid. - Moreover, the more principal cause is that which has used the aid of the others physically or morally. Thus one mandating, one commanding, is more principal than one executing; the executor, than the counselor of the execution; he who has cooperated by positive action, than he who merely did not impede the execution. - The reason of the response is because the more principal cause subordinates the others to itself and, as it were, absorbs them.

II. Corollaries. 1. Therefore, he who alone was the more principal cause must make good, without recourse, every damage imputable to himself.

2. If several were equally principal, they must divide the damage among themselves. For these causes are coordinated among themselves. Yet each owes the whole to the injured person (who therefore are held *in solidum*): a) if they acted from conspiracy or a society of wills; for then, beyond the parts which they execute, they are formal accomplices of the others; b) if by some other reason they contributed to effecting the whole damage; whether because nothing could be effected without them, or because their cooperation truly pertained to the whole damage. So, at least, the common sentence.

When several are obligated *in solidum*, each owes the whole to the creditor or injured party in such a way that afterwards he can reclaim from the others the part paid for them. Therefore each must furnish the debt absolutely for his proportionate part, but conditionally (unless the others pay), the whole debt.

Besides that solidarity among debtors, there is also solidarity among creditors when, by force of agreement, each can exact the whole from the debtor, which afterwards they will have to divide among themselves.

3. Whatever one owes definitively or absolutely, he has to pay to the injured person unless it is morally established that satisfaction has been made to him: in which case he will have to return what has been paid to the one who made satisfaction.

But he who is bound only by a conditional obligation (i. e. if the others fail), then only must make good the damage when, either from an inquiry having been made, or from the customs or inability of the principal debtor, it is morally established that satisfaction has not been made by him and will not be made.

III. Scholia. 1. The unlearned understand with sufficient difficulty the obligation of restoring *in solidum* with recourse against others. Those, in turn, to whom restitution is owed will prefer to obtain a part rather than nothing. Therefore, if there is danger lest those obligated to the whole be unwilling to restore anything, the injured persons can not rarely be presumed to consent that only a partial obligation be urged.

Wherefore, from St. Alphonsus (*Homo Apostolicus*, tr. 10, n. 54), it will be preferable to exhort those unlearned in theological or juridical matters that they restore what they owe, permitting their conscience to define the quantity.

2. You should observe that, for damage to be from conspiracy, formal consent of intentions is not sufficient, but it is required that the damage have its cause in that consent. Thus the common soldiers of the same army indeed conspire; but by that conspiracy of the individual soldiers few are moved.

From the things said you will gather these applications.

1. Counselors *per se* had a partial and secondary influx into the whole damage. Wherefore *per se* they are conditionally held (after the principal causes) for the whole damage which would not have been done without the counsels.
2. Those who, an association having been made, commit thefts, are held *in solidum* for robberies foreseen in a confused way and for connected damages of persons or things, although some things were done by some and others by others. For all seem to have arisen from the conspiracy.
3. When several, without conspiracy, have exercised partial efficacy upon divisible damage, it suffices that each restore the part which he has injured, for example, the part of the house which he has destroyed. And the evildoer who acceded when no hope now remained of saving the part seems to have done no damage.

But if partial causality effected damage not divisible, as if four carry off a chest which three would have carried off, the patrons of the common sentence, not very consistently enough, obligate each to a man's share only (Lugo, d. 19, n. 82).

N. B. The opinion does not seem so established which obligates *in solidum* all those who, even setting conspiracy aside, furnished cooperation without which the damage could not be inflicted, or which truly was useful for inflicting the whole damage. And Lugo testifies that there is a certain controversy, d. 19, nn. 79 ss. - Nor is the obligation of restitution so certain which they impose conditionally on those who by an action not unjust in itself cooperated materially in injustice. Cf. d'Ann., I, 174; II, 93. These things can be attended to so that restitution may be urged less severely.

II. - On the Order to Be Observed in Restitution Among Cooperators

Norms. 1. He who has to restore another's thing or the fruit of another's thing as a holder must furnish that without any other regard of order.

2. He who is obligated as an unjust damager must immediately restore whatever, by this title, he owes absolutely; but what he owes conditionally, he owes only after him who is held absolutely. Therefore first the one mandating, or the primary cause, is held; then the primary executor; afterwards secondary causes are obligated.
3. Among those who owe conditionally, positive cooperators are obligated before negative ones; but among these themselves the order is defined by proximity. Those among whom no

subordination is detected, however, are held equally.

Some doubt can be moved concerning the place of the counselor who was a persuader. *Per se*, he is placed after the principal executor. Yet if for his own sake he advised or asked that something be done, at least if the matter was done in his name, the counsel must be held as a virtual mandate. Cf. Less., *Iust.*, c. 13, n. 42.

4. As often as, whether by condonation or by another reason, he who owes absolutely is freed, those who are conditionally held to that extent are freed; but the exemption of a secondary cause in no way frees the principal one.

Summary

I. Man can cooperate in another's injustice both positively, in six modes, and negatively, in three modes. Let us treat distinctly of positive cooperators.

1. **One mandating, or commanding.** To him, as to the principal author, are imputed all damages which, by a morally necessary nexus, are joined with the execution of the mandate, but not those which the mandatary has added by his own malice or vincible error. On account of the harmful power conferred, the one mandating can also be held by another title. By timely revocation the causality of the mandate, as such, is suppressed, though not always the causality of the counsel contained in the mandate.
2. **The counselor**, by doctrinal counsel, or counsel by which he communicates knowledge, has causality even principal; while by suasive counsel he exercises only secondary causality. But unless he has efficaciously revoked the counsel, the counselor of damaging counsel must make good the effects of the counsel, excepting those effects to which the proverb can be applied: "no injury is done to one consenting." An efficacious retraction of naked counsel is made by simple revocation; of counsel clothed with reasons, by new arguments being adduced; of doctrinal counsel (by which the mode of harming has been handed on), by effecting that the effects of the damaging knowledge can be avoided.
3. **Consent** is constituted by the concurring votes of several persons. Those who give a vote from conspiracy are authors of one morally single action; those who have given a vote necessary for the damage are compelled, by the common sentence, to bear the imputation of the whole damage; those who, without conspiracy, have given a vote beyond what was required must more truly be compared with those who, more numerous than was necessary, together did one damaging work, so that they must bear the damage at least by a man's share.
4. **The flatterer or adulator**, insofar as by his words he has impelled to the action or impeded restitution, can be held for damages.
5. **Recourse or the receiver**, who offers security either to the evildoer or to things carried off by robbery or taken away by theft, will be held for damages: a) insofar as he moved the evildoer to act; b) insofar as he furnished the means of executing; c) insofar as he omitted or impeded restitution; but not insofar as he freed the guilty person from penalties. Material cooperation of this kind can be excused by grave damage.

6. One participating in the booty will have to be treated as a possessor of another's thing; one participating in the action, if immediately, violates the negative precept of justice unless he is excused by the right of necessity; if mediately, he transgresses the positive precept of taking care lest our action bring damaging effects.

Those several who have given a cause efficacious *per se* of damage, so that it is unknown who truly was the author of the damage, if they acted conscious of future confusion, will be held, according to the principles, by a man's share. Those who were ignorant of this are held by only an uncertain obligation.

Negative cooperators are held to restitution insofar as, by an unjust omission, they did not impede damage which they would have prevented by their due action. In doubt, their obligation will be uncertain. Officials placed over taxes do not seem to be held by justice to exact fines.

II. On restitution. Whatever each has of another's thing, or to whatever damage each has unjustly and efficaciously contributed, that must be delivered or restored to the person to whom it pertains, yet in such a way that the less principal cause of damage owes after the principal cause, and can reclaim from the more principal cause what has been paid.

Moreover, the more principal cause is that which, using the others, has as it were absorbed the rest. Equally principal causes divide the damage among themselves, yet in such a way that each owes the whole if they are obligated *in solidum*, whether from contract, or from conspiracy, or even from causality which contributed to the whole unjust damage. Yet this last point is somewhat controverted.

Another's thing, however, must be returned by the holder without another consideration of order.

Positive cooperators are held before negative ones; among them the order is defined by proximity.

The liberation of him who owes absolutely frees him who owes only conditionally, but not conversely.

Chapter IV: General Circumstances and Excuses of Restitution

I. - General Circumstances

I. To whom restitution must be made. 1. These are the principles: Restitution must be made to the certain and known owner of the thing, unless excessive difficulty or another cause excuses. - Yet restitution must be made to the possessor of the thing from whom the thing has been unjustly taken away, rather than to the owner, unless on account of special circumstances something else is advised.

2. When a society has been injured, restitution must be made to it, at least if it is a true juridic person, such as a state, a monastery, and not a mere condominium of several persons, as are societies constituted for the sake of profit. But even then restitution must be made to the society rather than by a proportionate part to the individual associates.[1] For if not merely the profit to be divided but the social capital itself has been injured, unless it is returned to the society, creditors in their common pledge, and also associates in their right of prosecuting the business by means of that capital, can be damaged. Therefore one must consider whether or not the social "capital" itself has been gravely affected by injustice. If the society was illegitimate, as a society of Freemasons or socialists, restitution is to be made not to the society but to the associates. Indeed, when there is question of a society of this kind, there is not *per se* a grave obligation of returning to the shareholders themselves, because the individuals suffer only light damage, unless the enormity of the damage and the number of shares possessed by the same persons bring it about that at least some are gravely injured.

Restitution is made to the treasury either by sending money to the minister who is over the public treasury (*delle finanze*), or by destroying a passive obligation of the State; but by no means by tearing up banknotes (*biglietti di banca*), since those banks are indeed protected by the State but cannot be confused with the State.

3. He who by many small thefts has inflicted damage on many citizens will better make restitution by thereafter selling for less to the same morally identical buyers, until equality is restored. Yet this is not prescribed under grave obligation, unless toward those who have suffered notable damage. Indeed, the others are rather easily presumed to consent that restitution be made to the poor.

4. If it is unknown to whom the thing to be restored belongs, and by sufficient inquiry the doubt is not dispelled: a) if the doubt is restricted among a few, personal equality commands that the thing be divided among them; - b) if the doubt is among many, or, because the owner is wholly unknown, the thing is of uncertain owner, nature cannot ratify the possession which the thief would wish to keep under this title. Wherefore he must despoil himself of it and devote it to the poor or to a pious work. The conclusion is admitted by all. Not a few confess that the proof is difficult. We prefer this proof. He who has possessed a thing from injustice must, in the only way in which he can, render the other unharmed. The only way is that he make that use of the thing badly usurped, or of its value, which the injured person reasonably ought to ratify. What other use can be indicated except a pious use, by which the common good is procured and at

the same time the soul of the injured person is consulted! Cf. St. Thomas, 2, 2, q. 62, art. 5, ad 2.

But if there is question of unjust damnification by which the evildoer acquired nothing, the common sentence obligates him also to give to the poor the value which he cannot return to the unknown owner. Yet there are some who do not urge this obligation.

An unjust possessor who is himself poor is not prohibited from assigning to himself as a poor person a thing of uncertain owner.

But what if, after the thing has been given to the poor, the injured owner is found? If he had previously been sought with sufficient diligence, nothing is to be restored to him; but if, without the diligence of inquiry having first been applied, the poor were substituted, satisfaction will have to be made to the owner when he appears.

5. What has been taken from a depositary, lessee, or administrator must be restored to these legitimate possessors rather than to the owner. Yet make exception if it is of no interest to them, or they are probably judged likely to consume the thing with injury to the owner. Wherefore restitution will have to be made not to a dissipating Prelate but rather to the Chapter; not to the religious subject from whom the thing had been received, but to the Prelate.

[1] Cf. the solution of the Sacred Penitentiary related at n. 494, toward the end.

II. Manner, place, time of restitution.

Restitution must be made as soon as possible, and in that manner and place which the right and interest of the injured person require, and as it can conveniently and morally be done, without grave inconvenience which one would suffer in his own thing, beyond the debt.

1. **As soon as possible.** He who delays restitution without cause sins against commutative justice by a sin whose gravity is to be estimated *per se* from the damage of the omission itself. In number, moreover, it will be one sin as long as he perseveres in the same will. And the same will can persevere for a long time, even for a year. Indeed, it can be one sin with the theft itself.

Therefore it is not lawful *per se* to defer restitution until death, or to commit it to heirs to be executed. Yet a penitent can be left in good faith where the admonition is foreseen as not going to be profitable. Again, however, if it is prudently judged that this will turn to the good of the penitent, since thus he is more efficaciously stirred to execute the present obligation, it will be expedient to impose restitution before absolution on a penitent who can easily return.

But one must act cautiously with the dying who are bound to restitution. A dying penitent must be absolved who at the same time is in good faith, and does not seem so disposed that he would easily admit and execute the obligation. If there is a slight danger of bad will, or the penitent is not in good faith, he will have to be made certain of his obligation strongly and sweetly, and assisted to accomplish it immediately. Is the obligation hidden, the execution of which cannot be done immediately? The sick man should be induced to entrust a sum of money to the confessor, or rather, if there is opportunity, to a faithful man, so that afterwards it may be secretly paid to the creditor; or

to leave that sum in his testament to the same person, with mention of restitution omitted. This mode supposes that the mention in the testament brings with it a likely explanation. If the obligation is not hidden but cannot be fulfilled immediately, let the confessor bring it about that it is certainly taken care of by the heirs, for example by leaving in the hands of the creditor a bond by which the debt is acknowledged. But it happens that a sick man, in possession of himself, is prevented from making any sign. If he is such a man who can easily be presumed to have obligations to be fulfilled, then, lest he perish from a false conscience, he should be warned that he is excused by impossibility from every obligation, provided he sincerely repents of every sin.

2. **In manner**, this alone is to be considered, that due equality be restored. If therefore it cannot conveniently be done otherwise, it can be done secretly, or under the appearance of a donation, or through an interposed person, or by undertaking undue labor for the advantage of the injured person. But what the creditor, deceived by the apparent gift, repays from gratitude must be restored to him, unless the thing was of small value or such as cannot be returned without offense to the giver.
3. **Concerning place**, a) A possessor in good faith, provided he acts prudently, sends the thing at the risk of the owner; on the contrary, a possessor in bad faith must go into this hazard. Yet he is freed, even if the thing perishes on the way, if he has followed a mode approved by the owner; if, from the presumed will of the owner, he has chosen a mode prescribed to him by law or by the judge; or, as several wish, if he has used a confessor for returning what he could not return by himself. As to debts from contract, an express or tacit agreement defines at whose risk the thing is to be sent. *Per se* the risk belongs to the buyer.

b) A possessor in bad faith, for example a thief, must at his own expense carry the thing to that place where the other would have had it, unless it had been taken away, destroyed, or unjustly detained. Make exception if, in the judgment of a prudent man, the expenses to be made would be excessive, when the value of the thing and the faculty of the subject are compared; for then generally either one can wait, or restitution can be made to the poor according to the presumed mind of the owner. Today, however, at least the price of a thing can be sent to foreign regions with almost no difficulty. In things not of great moment, they estimate as excessive *per se* a damage which exceeds the value by double.

A possessor in good faith sends the thing at the expense of the owner.

Both can deduct expenses which the owner would have had to make in preserving or carrying the thing with himself.

Debts from contract are paid in the mode expressly or tacitly agreed.

4. *Per se* the whole must be restored as soon as possible. From the probable damage of the owner you will estimate the gravity of restitution delayed or made by parts. It happens, for example, that modest sums of money restored are dissipated, while greater sums would have been preserved.

He who owes from delict seems also bound to make good those damages which arise from delay even when not culpable. Yet the more benign opinion, according to which a just delay purges delay, can be admitted, unless the damage could in some way have been foreseen in the delict itself.

In what order restitution must be made. — Order is especially to be considered when the debtor is unable to pay all. The reason of the order is repeated from this, that the patrimony of the debtor is commonly obligated to all creditors, yet among them there can be found those who by a just title are preferable. Hence:

a) Another's thing itself, because of the bond of ownership, must first be restored to the owner, by whatever title it is possessed. Yet money which has been mixed with one's own is probably to be excepted, on account of confusion.

b) A privileged and hypothecary creditor cannot be prohibited from the use of his rights; and *per se* the legal order must be observed, if the laws establish one.

c) Those things which are owed by an onerous title must be paid before those which have been promised gratuitously (even piously); for these are subject to the condition: unless something obstructs.

d) More probably, those things whose owners are known must be paid before those which are of uncertain owner. For they are owed by a greater and more certain title.

e) But it is not established that debts from delict must be paid before debts from contract.

f) If the debts are of the same character, he cannot be reproved who first satisfies the prior creditor, because he precedes in time; or the poorer creditor, from piety; or the one asking first, as being more diligent; indeed even the greater friend, because each has a right to the whole. Yet this last thing is denied by several. He satisfies the mind of our law more who pays each one by a proportionate part.

g) But if, because he had to cede his goods or make cession in court, the debtor has lost the free administration of his goods, then the legal order must be strictly observed. But acts done even before in fraud of creditors, and sometimes payments themselves (especially those which are made in merchandise and not in counted money), can be revoked by the action which from the Roman praetor, its author, is called Paulian. That sentence of the judge will have to be executed, at least after juridical intimation, unless it rests on a false presumption of fraud.

N. B. He who is insolvent cannot by notable donations harm creditors; and those participate in injustice who knowingly would impel the debtor to them. But those who, conscious of his inability, merely accept a notable gift certainly cannot be condemned, since they merely use another's sin for a gain which, if you abstract from the subjective intention and condition of the giver, is honorable. Nor does this strictly oppose charity *per se*, since charity does not oblige with grave inconvenience. Yet the same persons seem little to be commended.

II. - General Excuses

Excuses can take their origin from the part of the debtor or from the part of the creditor; some remove the obligation, others permit only delay of payment. Therefore:

I. On the part of the debtor.

1. The following show or make the debt to be nothing:

a) Defect of proportionate theological fault.

b) Composition entered into with the Holy See. This can be conceded as to ecclesiastical goods, and also as to uncertain debts, when restitution is permitted to be made to a pious work or to the poor. Compositions are conceded by the Sacred Congregation of the Council, and, if the case was occult, by the Sacred Penitentiary. In conceding composition concerning uncertain debts, the Holy See seems to have unfolded a certain high indirect dominion over temporal things, so that not even when the owner appears does anything seem to be owed.

c) Conversion of title: the debtor gives to himself as a poor person what he could have bestowed on the poor.

d) Prescription; and, for the possessor in good faith, destruction of the thing.

e) Payment made to the creditor of the creditor, at least when justice permits that payment be made to him. Yet since it removes some option from the later creditor, this exchange is illicit without a reasonable cause, although *per se* in the internal forum it frees perfectly.

f) Compensation with an equal and certain debt by which the creditor, from commutative justice, is obligated to the debtor. And he who, forgetful of the debt, has affected the creditor with a gratuitous gift, unless the circumstances demonstrate otherwise, is probably judged to have wished first to satisfy his own obligation of justice. Wherefore what one, after the obligation of restitution has arisen, has bestowed upon the poor can be deducted from the restitution which is permitted to be made to the poor.

g) In a doubtful cause of law or fact, a sentence of the judge obtained in good faith.

2. Those things excuse for a time, or permit delay, which bring it about that the creditor would oppose himself irrationally to the delay. And the cases are generally reduced to inability, whether physical or moral, i. e. excessive difficulty, yet extrinsic to the cause of the debt. Wherefore damage which consists in this, that you despoil yourself of goods unjustly acquired, will not excuse, unless the reason of positive infamy is added. Moreover, the excuses are common to an obligation from contract and from delict.

Furthermore, the excusing damage, if you except only extreme necessity, in which all things become common, must truly be graver than the damage of the creditor. But it can be one's own damage, or that of others, or that of the commonwealth.

What if both creditor and debtor are found in grave necessity? The probable controversy concerning this matter can be solved practically as follows: he who is in grave necessity would, from restitution, fall into almost extreme necessity, and thus would suffer a greater damage. Therefore no one *per se* is compelled to lose his justly acquired state in order to restore. But he can live sparingly according to his condition. Sparingly, I say, and by trying gradually to restore.

Standing on natural law, one burdened with debts who shortly, say after one or two years, hopes that he will be able to pay, must defer entrance into religion, unless he rightly fears graver damage to himself from the delay, or can pay equally well in religion. But in religion itself, both from goods which he legitimately acquires, and by labor congruent with his state, the permission of the Prelate having been obtained, he must satisfy creditors. By the positive law of canon 542, 2°, however, "those burdened with debt who are not able to pay are illicitly admitted."

N. B. 1. A temporary excuse can become perpetual by accident, if the impediment perseveres. But usually partial restitution becomes possible; nor should it easily be conceded that no mode is available which is not joined with infamy.

2. He who is a debtor from delict, contrary to him who is obligated by contract, must furnish the damages of delayed payment, if there are any which could have been foreseen.

II. On the part of the creditor, the following frees:.

a) Express or tacit condonation, for example, if he tore up the bond. Condonation can besides be presumed in thefts of lesser moment (of a few coins, of foods) which are done at home by children of the family or by wives, if the things taken away no longer exist; - in foods or things of lesser moment which have been consumed by servants; - or even, in grave matter, when a servant detected by the master is corrected or expelled, with no restitution requested; - or when, in a criminal cause, no compensation of damage was requested.

b) In small things which workers laboring in forests, vineyards, and workshops sometimes carry away, when they are things which the owner cares little about or, if asked, would easily grant.

c) In small thefts of the poor which are made against diverse owners. If against the same owner, let them restore at least a part, and propose amendment concerning the rest. Cf. Noldin, II, 515, d.

d) Concordats or other agreements, to be executed honorably, permit the debtor at least delay. Concerning those agreements we treated at n. 501, where we also spoke of the fuller liberation which the debtor obtains through them.

e) A broader promise being excluded, the debtor who retains as much as is enough for him to live sparingly according to his legitimately acquired state will not have sinned against justice.

But today less must be indulged to the debtor, since by the agreement itself or by the authority of the judge he is permitted to keep some things. Yet it can be tolerated that those ceding their goods hide certain things which they themselves hold in great value (for example on account of the memory of parents), but which are less precious to others. But it is necessary that they probably be able to refund the price of those things to the creditors. If an honest debtor wishes to keep something more for himself by whose aid he has greater hope of satisfying creditors fully, these can sometimes be judged to consent. But whatever has been retained beyond the law is excluded by the favor of the law, and therefore must be restored as soon as means are given. - But we shall never excuse those who rashly risk another's money, prepared, after cession of goods, to try fortune again.

Summary

I. Circumstances of restitution. — 1. The obligation of restoring cannot be urged when there is a positive and probable doubt concerning the justice of the action, or concerning the damage brought, or concerning the causality of the action. But if a certainly owed payment is doubtful, the law of the equality of justice begets a certain obligation of restoring for the proportion of the doubt, yet so that restitution is not to be imposed on a debtor who wishes to follow the more benign opinion.

2. Restitution must *per se* be made immediately; so that an unexcused delay is a new injustice, to be estimated according to the general norms. Inculpable delay is in no way imputed to him

who owes from contract; but it seems to impose on him who owes from delict the burden of bearing the damage, at least if it could have been foreseen in a confused way.

3. The mode of restitution must be such that due equality is repaired without damage or inconvenience of the creditor: as if by too many tiny restitutions you restore grave matter.

4. Restitution must be made in that place where the creditor has a right. But a possessor in good faith, at the risk and expenses of the creditor, and a holder in bad faith, at his own risk and expenses, both prudently send the thing. Each can deduct useful expenses from the quantity to be restored.

5. **To whom restitution must be made.** 1. *Per se* to the certain and known owner of the thing; yet rather to the despoiled possessor. - 2. To the society which has been injured or has the right, not to the individual associates, unless the society was illegitimate; and then often the grave obligation will be only that of giving to the poor or to a pious work. - 3. Restitution must be made to the treasury in such a way that the State itself recovers its good. - 4. If by many small thefts damage has been brought to many, it will be better to procure the badly acquired good morally for the same persons. If no one among the many has been gravely injured, they are rather easily presumed to consent that restitution be made to the poor. - 5. If it is unknown to whom the thing pertains, the thing must be divided among the few concerning whom there is doubt; if there are many, or the thing is of uncertain owner, nature nevertheless cannot ratify the possession of an unjust man. Wherefore the thing must be devoted to the common good of the poor or of pious works. The common opinion imposes the same substitution on the damager.

6. **Order among creditors.** The patrimony of the debtor is commonly obligated to all creditors. Nevertheless, another's thing, at least one defined in body, must *per se* be returned first to its owner; - privileged and hypothecary creditors cannot be prohibited from exercising their rights; - those things which are owed by an onerous title must be paid before those which have been gratuitously promised; - more probably a known owner is to be preferred to an unknown one. Nor is he to be reproved who, while creditors are of equal right, has paid first the more diligent, or the older, or the poorer, or indeed the greater friend.

But if, on account of cession in court, the debtor has lost the free administration of his goods, the strictly legal order will now have to be followed.

But acts previously done in fraud of creditors, and sometimes even payments already made, can be revoked by the Paulian action.

They seem immune from injustice who have merely accepted a notable gift from a debtor who is insolvent, but has preserved the administration of his goods.

II. Causes excusing from restitution. 1. On the part of the debtor, the following fully excuse: defect of theological fault, when there is question of delict or quasi-delict; - composition with the Holy See concerning ecclesiastical goods or uncertain debts; - conversion of title; - prescription; - destruction of the thing, if the possessor was in good faith; - payment to the creditor of the creditor; - compensation; - sentence of the judge in a doubtful cause of law or fact.

Those things excuse for a time which bring it about that the creditor would oppose himself irrationally to the delay. The cases are generally reduced to physical or moral inability, yet extrinsic to the cause of the debt. - Extreme necessity excepted, the excusing damage, whether one's own, or that of others, or that of the commonwealth, must be graver than the damage of the creditor. Foreseen damages of delayed payment must be furnished by him who owes from delict.

A broader faculty legitimately obtained being excluded, the debtor who retains as much as is enough that he may live sparingly according to his legitimately acquired state does not sin against justice.

2. On the part of the creditor, express or tacit condonation frees, which in thefts of lesser moment can sometimes be presumed; - a concordat or agreement with creditors, insofar as it has this force.

Appendix: On the Perfection of Justice

I. Justice is perfected by the virtue of Equity. That virtue, midway between justice and charity, and a potential part of justice, bends the soul to the human use of right.

It is a certain mitigation of strict right; - it observes in another some imperfect title to obtaining something, as when, beyond the promises of a contract, one divides a part of extraordinary profit among the workers, and thus shows himself nearer to justice than to charity.

We call that use of right human which is becoming to be employed by man, with attention to the term of right, which is another man bound by the office of justice.

From its genus, equity does not oblige under grave sin, because the title which it observes in another is imperfect, and the defect of equity proceeds not from some hatred of neighbor but from an excessive affection for one's own right.

When it is violated without injury of right, it induces no debt of restitution.

From that special virtue you ought to distinguish the equitable interpretation and application of right which is owed by the judge from office, and the benign interpretation of law, contrary to the words but according to the mind of the legislator, which is called *epiikia* or *epikeia* and is also prudently permitted to a private man.

II. Justice is perfected by the virtue of Liberality. , which, moderating the love of money, makes us easy and prompt to spend it when reason dictates.

Especially when that reason is mercy and beneficence, the virtue procures such a use of material goods as is demanded by their first destination.

III. Justice is perfected by the virtue of Gratitude. , which equalizes, with the affection of the benefactor, the will of him who has been moved by the benefit.

This is a certain justice common to the rich and to the needy. While the question concerned restitution, the question was about compensation of a damage of a higher order through a material return. Gratitude understands, in the material benefit, the affection of the giver, and, transcending the material benefit, strives to equalize the affection.

IV. Justice is perfected by the very virtue of Charity. For since the observance of rights is, as it were, the first condition of peace among men, justice can be considered as a certain beginning of friendship, which queen charity leads to the summit of unity with God and neighbor.

Conclusion. In order that we might consult for the weaker, we proposed what can be tolerated in rigor, while the substance of justice is preserved; but we did not pass over in silence what is more honorable.

There is a certain common or lowest probity, which refuses strict servitude to exterior things, yet does not know how to reject even anxious solicitude. Wherefore it carries a divided heart and attains only imperfect peace.

But there is also eminent probity, which meditates triumphing over external things.

This admits nothing even merely suspect, neither in the thing nor in the mode. By the complete repudiation of servitude it attains perfect liberty.

But if you consider what force there is in concupiscences for tempting man; what most praiseworthy affections, as of piety toward children, sometimes seem to advise less straight ways; what human confusions can sometimes be avoided only by fraud, while, on the contrary, the greatest worldly rewards are promised to a less scrupulous boldness, we shall easily understand that that exquisite probity communicates its nobility only to a few, and can scarcely be acquired without the power of the Most High. Wherefore St. Paul, in the Epistle to the Galatians, V, 22. 23, where he enumerates the fruits of the Holy Spirit, ascribes the more perfect honesty itself(*) to the possession of the Holy Spirit.

Therefore let us inculcate and promote better and more perfect honesty by public preaching and private counsels. The good of the Church demands this, whose faithful ought to edify others by more perfect virtue; the greater and happier order of the state demands this; the peace and happiness of one's own conscience demands this.

But that our exhortation may be efficacious, let us at the same time strive to raise souls to that holy love of God by which, made superior to earthly things, we may pursue the highest justice, which consists in perfectly fulfilling the divine will and of which it has been said:

"Blessed are they who hunger and thirst for justice"!

Summary

I. Justice is perfected by the human use of rights, to which the virtue of equity inclines, so that a man, on account of a reasonable cause, exacts less than he strictly could; and recognizes in others even imperfect titles to obtaining something. That virtue occupies a middle place between justice and charity.

II. Justice is perfected by liberality, which uses exterior things according to their first destination.

III. Justice is perfected by gratitude, which tries to equalize the affection of the benefactor.

IV. Finally, justice is perfected by charity itself. For because the observance of rights is the condition of peace which charity makes intimate, it can be considered as friendship begun, which queen charity itself leads to the summit of unity with God and neighbor.

More perfect justice is numbered among the fruits of the Holy Spirit.

(*) By the name of goodness, ἀγαθωσύνη, probity is designated.

Tract VI: On the Virtue of Truth

Usefulness. - It is necessary that in this tract we learn to esteem greatly the noble virtue of truth and sincerity; to discern well and preserve the various offices of secrecy; and finally so to protect secrecy itself that we may continue to detest and flee lying according to its true notion.

Order of speaking. The order of speaking, intimated by the very usefulness proposed, will be this: that in three successive chapters we treat of veracity, of secrecy, and of lying.

Chapter I: On the Virtue of Truth and Sincerity

Article I: On the Virtue and Opposite Vices

1. Notions. The noble virtue of truth or veracity inclines to the right use of signs by which man communicates with others or has commerce. Through it there is effected "that one show himself exteriorly, by exterior signs, such as he is" (2, 2, q. 109, art. 1, c.). From that moral virtue, the truth itself which it procures is called moral truth. We can fall short of the true both by amplification, or by saying the greater, and by attenuation, or by saying the lesser. Therefore the formal object of the virtue, or the honesty of moral truth, is discerned to have been placed in the mean. Even on the part of its act, this virtue is in the mean; for if more principally we are commanded to manifest the soul in speaking, nevertheless we must open the mind in such a way that we do not derogate from the office of preserving secrecy.

Therefore properly and strictly the virtue of truth fosters the cult of taking care that words or equivalent signs are consonant with our mind. That unity of the exterior and interior man is seen to be honorable *per se*, and is shown to contribute to the good of human society. Moreover, the virtue of truth appears joined *per se* to justice; for it procures a certain equality, and makes our conversation with others right: therefore it contains respect of others. Its office can also, in certain cases, be commanded by commutative justice.

2. On sincerity. For the good of social living together, it also helps that man be not only true in his speech, but also sufficiently open, or that he not deny to others an opportune manifestation of himself. Sincerity regards this, which makes us inclined to a full, yet prudent manifestation of ourselves. It is in the middle between distrustful dissimulation and indiscreet revelation of one's own affairs.

3. The opposite vice by excess is indiscretion; by defect, lying. - Simulation is lying by deeds. - Hypocrisy denotes this particular simulation by which someone simulates himself as different from what he is; while dissimulation merely hides one's own person.

Article II: On the Witness and the Accused in Judgment

I. On the Witness. The obligation of testifying, on account of sufficient private or public necessity, is from charity, whose debt is urged by legitimate citation.

But he who appears is held from justice to say nothing false which is harmful to a party. But when an oath has been taken, he is now forbidden by religion to lie, and he must tell the whole truth to one legitimately questioning him concerning the cause which is being treated. As to telling the whole truth, this promissory oath admits smallness of matter. Cf. what was said at n. 193.

An oath which is furnished to an incompetent judge can be regarded either as fictitious, or, if it was true, it will not oblige except to manifesting those things which can be narrated to such a judge.

Nor should the following be said even to a legitimate judge: a) those things concerning which he questions illicitly or not legitimately, i. e. without the order of law being observed; b) those things which are known under committed secrecy or by injury, with the exceptions saved which limit the

obligation of secrecy (cf. nn. 698 and 699); c) those things which would be too damaging to the witness or to his own; indeed, the damage of a third party which would clearly outweigh the utility of the testimony seems to suffice that you conceal the matter: the judge is not presumed to wish that you reveal these things; d) facts in which another has not sinned, if the interrogation is concerning a delict.

If at some time you must confirm by oath the legitimate response "I do not know," by which you merely declined a response, you are judged to confirm that true thing itself which signifies: "I do not wish to respond." Or if that sense is too hidden, the oath will lack an object, i. e. it will confirm nothing.

Revocation of false testimony is governed by common principles. To aid sincerity, laws sometimes establish that false testimony is not consummated except after the final words by which the witness declares that he perseveres in what he has asserted.

To free an innocent man, you will have to appear of your own accord: not, however, if another, even one guilty, would thence be condemned to an excessive penalty. The principles concerning the obligation of charity must be applied.

On the accused in criminal judgment. 1. **On confession of the delict.** Now by no civil law is the accused held to confess the delict.

Must the same be said in canon law? Noldin, II, n. 733, thinks that the distinction still comes into use which, before the Code, was made between lesser delicts, which one legitimately questioned had to confess, and greater delicts, which one, with attention to grave penalties, would not confess without heroic virtue. But he uses an argument of no value. For he adduces the words of canon 1646: "the accused, legitimately convened, must respond"; but in that canon the word *respondere* is taken in a juridical signification, which is the same as if you should say: "one legitimately convened must present himself before the judge." But in a criminal judgment the Code so orders the process that it in no way mentions an obligation of confession; and for one accused who confesses, it wills *per se* that judicial correction be substituted for criminal judgment (c. 1947).

But if the accused can conceal the delict, neither are the words which he uses for concealment to be held as lies. For from the circumstances themselves they appear not to have been uttered seriously.

But where, either from defect of competence or from violated law, legitimate interrogation is lacking, it is manifest that those arts are much more lawful.

2. **On action against witnesses.** Whether they are voluntary or compelled, it is lawful for the accused to defend himself against witnesses, even by revealing a fact whence their reputation is injured, provided there is an equal proportion between the damage thus actively permitted and the hoped-for utility of the revelation. The accused must abstain from calumnies. Yet if the witness himself was lying, or is questioned in a non-legitimate judgment, that defense seems to oppose truth, but not justice.
3. **On declining the penalty.** It is lawful for the accused to decline the penalty by flight, even, if the utility is of sufficient moment, by breaking open or destroying the prison. In this matter he can be aided by friends, but not by public guards. He cannot resist them, nor corrupt them by money. He is not forbidden to deceive the same men craftily. The damage which they will

suffer cannot be imputed from justice to the accused who is using his right; yet where proportion between his own utility and the guard's damage is lacking, charity will command that he abstain from the injurious action. Nor, according to the opinion of many, must he repair damage brought upon the building. Cf. Lehmkuhl, I, 979.

If the sentence was unjust, it will be lawful to corrupt the guard, forewarned concerning the injustice, or to buy his connivance by a price. If the sentence was only materially unjust, Lehmkuhl, I, 978, permits the accused only that resistance which he can employ without grave violation of others and with hope of escape. But if it is formally and sufficiently notoriously unjust, there will now be no scandal given through resistance. St. Thomas, 2, 2, q. 69, art. 4, says that that judgment is similar to the violence of robbers. Then, with attention always to the proportion of the evil of the penalty, the hope of success, and the damage of the others who will at least be materially unjust aggressors, it will be lawful to resist the ministers of justice themselves as robbers.

But it is not lawful to anticipate by killing a false accuser, false witnesses, or a judge from whom an unjust sentence certainly threatens. Cf. the already cited proposition 18 of Alexander VII (cf. n. 607).

Summary

I. 1. The virtue of truth or veracity inclines to the right use of signs by which man communicates with others or has commerce. Taking care that words are consonant with our mind, it procures the truth which is called moral. Insofar as it pursues equality and rectifies our conversation with others, it is a potential part of justice. Its office can in some cases be commanded by the very virtue of justice.

2. Sincerity, midway between distrustful dissimulation and indiscreet revelation of one's own affairs, impels man to a full but prudent manifestation of himself.

3. To these virtues there are opposed, by excess, indiscretion; by defect, lying. While dissimulation merely hides one's own person, simulation is lying by deeds. Hypocrisy means a peculiar simulation by which someone simulates himself as different from what he is.

II. Obligation of a witness in judgment. Charity urges the very obligation of testifying; justice forbids that anything false harmful to a party be said; the religion of a promissory oath besides obligates the witness, when legitimately questioned, to lay open the whole truth. Except, *per se*, those things which are known either by injury or under committed secrecy; those which are too damaging to the witness or to his own; indeed, according to the reasonable will of the judge, those things which would bring damage to a third party not at all compensated by the utility of the testimony; facts by which another has not sinned, if the interrogation is made concerning a delict.

III. By modern law, the accused is never bound to confess his crime or sin. Wherefore neither is his denial to be held as a lie, since, from the circumstances, it can be ambiguous and merely signify the will of not confessing.

He is permitted usefully to defend himself against witnesses, even by revealing their hidden vices, if proportionate utility is hoped from this.

He can decline the penalty by fleeing, but not by violently resisting ministers or corrupting them with money, unless he has wished to redeem himself from the vexation of an unjust sentence.

Chapter II: On Secrecy

I. The notion of secrecy and its varied character. A secret is a hidden thing, not to be divulged. Secrecy is distinguished:

a) **Natural**, which, if it remains alone, is also called merely natural, whose revelation is prohibited by the very law of nature concerning preserving either charity or justice, according as the other would conceive just sorrow from the revelation or receive injury. A secret of this kind already arises from those things which are communicated in conversations with a certain mutual trust. There things are said without sin which without sin would not be reported to him about whom they were said.

b) **Promised**, when an obligation either only of fidelity or also of justice arises from a promise following upon knowledge of the matter, whether this became known by chance or through another's communication.

c) **Committed**, when an agreement concerning preserving secrecy has been placed before the communication itself. The agreement can be explicit or tacit: as when someone approaches a confessor, advocate, or physician for the sake of seeking counsel. Secrecy from office obliges more strictly, so that it is called rigorous. It supposes a profession which induces secret communications. Therefore there is not true "professional" secrecy for drivers, although such is sometimes recognized even in the civil forum.

d) **Sacramental**, which flows from every sacramental confession and from sacramental confession alone, and alone admits neither exception nor light matter in direct revelation.

When parties agree concerning secrecy *quasi* of confession, they would attempt in vain to attribute the force of sacramental communication to their confidences. But by the greatest force by which they can, they intensify the obligation.

Revelation obtained by an unjust way induces a graver secret. The use of such knowledge is prohibited, unless another's injustice or public safety should permit you to extort the secret by force and fraud.

II. Obligation. 1. From merely natural secrecy, one must be silent as long as there is a cause of charity or justice; from a promise, one must be silent as long as, the promise set aside, it would be lawful to keep silent; from a committed secret, one must be silent as long as the other has a right of willing that the thing be concealed. But the one committing the secret justly exacts silence as long as he himself justly conceals the matter, unless the reason of the common good narrows or extends the obligation of keeping silence. Wherefore, not even in judgment is it lawful to reveal the hidden crime of the one committing the secret; but for preserving a rigorous secret, even the damage of an innocent person must be put after it, unless it threatens from the very deed of the one committing the secret: as if a pregnant girl wishes to procure abortion.

2. Nevertheless, with grave proportionate damage the obligation of the agreement ceases, and therefore also of the committed secret, even one rigorous *per se*: lest there be lacking those who are willing to give counsels. Yet the cause of the public good can sometimes require that you

prefer death to revelation. On the contrary, if it is gravely important to religion or fatherland that it be revealed, even a rigorous secret can be disclosed.

Today they are accustomed to enlarge the force of rigorous secrecy beyond just limits. Then a new reason of the common good can intervene so that, for example, Catholic physicians could observe these norms, lest recourse be had to upright physicians with less confidence.

3. From all or grave guilt, consent prudently presumed of the one himself committing the secret will excuse a revealed committed secret, as if the revelation turns to his good, or if it is of little interest to him and the revelation has great utility. Nor is revelation made to one or another prudent man judged grave *per se*.

On Letters. 1. Secret matters which are communicated through letters, according to the nature of the matter and the mode of the writer, are protected by natural or committed secrecy and remain *per se* in the dominion of the writer.

2. To read letters destined for another, when they are closed or kept in a secret place, is *per se* grave, unless the danger is absent of finding grave matter there. There will be no sin if it is done on account of a just cause, or with the consent either of the owner of the secret, i. e. the writer, or of him who can prudently judge concerning the force of the secret, i. e. him who received the letters. It is lawful for him to open and read letters who probably thinks that they are injurious to himself, or that they contain such things from which he can avert grave and unjust damage from himself or from another or from the commonwealth.
3. Parents are permitted to read letters written and received by children. The same is permitted to religious Superiors according to the constitutions. Yet those letters which contain matters of conscience can be torn up by them, but cannot be read when the person writing is unwilling. But they can examine the letters sufficiently so that they know that matters of conscience are being treated seriously. What is lawful for a husband must be gathered from received customs, unless a founded suspicion gives a greater right. From letters read, the aforesaid Superiors are held by natural secrecy, by which, the consent given or reasonably presumed of him whose secret it is being set aside, no other use of the knowledge is permitted to them except that which is referred to the end on account of which the faculty was given.
4. He who casts letters into an open place, even when torn, admits the voluntary danger that the fragments be gathered by another. Therefore the collector can suppose that no matters are contained in them which the possessor of the letters could not expose to this danger. Wherefore the reader yields only to venial curiosity; indeed he does not sin if he has reasonably hoped for some utility for himself from it. More concerning these things, cf. Lugo, *Iust*. d. 14, nn. 145-151.

He who, against the other's will, furtively reads another's secret writings sins not only by curiosity, but also by a sin of injustice, since each one preserves dominion over his own writings. The sin can be grave if it is done with notable damage of the other, or if the owner is very unwilling. Except the rights of parents and Superiors and of those who have to protect themselves from injury, in the manner which was said concerning letters.

Summary

I. Secrecy is distinguished as natural, which is imposed by the very natural law concerning preserving charity or justice; promised, which arises from a promise that follows knowledge had from wherever, whether the promise was one of fidelity or also of justice; committed, which is owed from an agreement placed before the communication itself. A tacit agreement of this kind is had when someone, for the sake of seeking counsel, approaches a confessor, advocate, or physician; and there arises the secret which is called rigorous. Finally there is sacramental secrecy, flowing from every secret sacramental confession and from sacramental confession alone.

The parties intensify by the greatest force by which they can the obligation, though not sacramental, of preserving secrecy, when they agree concerning a secret *quasi* of confession.

II. Natural secrecy must be preserved as long as it is urged by the law of charity or justice; and that especially when the knowledge has been obtained by an unjust way: then only another's injustice or public safety, which would permit invasion of the secret, make its revelation honorable; promised secrecy holds as long as it would be lawful to be silent; committed secrecy, as long as the other preserves the right, i. e. as long as he himself justly conceals the matter. Rigorous secrecy must be preserved even with damage of an innocent person, unless the secret threatens from the deed of the one committing it. - Yet *per se* no secret, unless it is sacramental, must be preserved with one's own damage which would excuse from preserving an agreement. But the consent of the one committing the secret can prudently be presumed.

III. On letters. Matters communicated by letters preserve their nature of secrecy; and they remain *per se* in the dominion of the writer, so that it is *per se* grave to read the letters of others which are closed or kept in a secret place: for those which are found thrown away in an open place are judged to have been permitted for every use. Parents and religious Superiors, according to the Constitutions, are permitted to read letters sent and received by children or subjects. The right of a husband is to be estimated from received customs. Yet letters cannot be known by Superiors when it is sufficiently established to them that they treat of matters of conscience; whether there is question of another's conscience, or of the conscience of a subject who is not obligated to render an account of conscience; but those letters must either be handed over or torn up.

Chapter III: On Lying

Notion and malice. 1. A lie is a false signification against the mind. The common people sense this, and the age-old authority of the Catholic school approves it. It is intrinsically dishonorable, because it contains an abuse of speech or of the faculty of signifying against the primary end of that faculty. Therefore, because the primary reason of dishonorableness is repeated neither from the right of the hearer nor from social detriment, the distinction cannot be admitted between lies socially useful and socially harmful, as though the latter alone were illicit, or between false-sayings, by which no truth owed to another is denied, so that they can be honorable, and lies, which deny the truth owed to another.

Yet a lie neither removes in the speaker the subordination of the faculties, nor of itself deprives the hearer of necessary truth; wherefore it is not in itself a grave sin, but contains a malice venial in its kind; so that gravity can come only from an added injury or violated religion.

2. That a lie be had, there is required a) formal speech, or that you reasonably be judged to will to communicate your mind, i. e. that in exercise you say that you are speaking. Thus while you recite a fable, while you write a poem, and while, compelled, you answer without a positive obligation of saying the truth, as such you do not speak formally; - b) speech against the mind, or by which you knowingly say things which are false, so that between the expressed judgment and the mental judgment there is discrepancy.
3. A lie is distinguished as jocose, which is ordered to delight; officious, by which one's own utility or another's is sought; and pernicious, by which another's damage is chosen or intended. The last can become grave from the damage inflicted.

To use words in a restricted signification which either is intended by the one interrogating himself or appears from the circumstances is not a lie. For then, as such, they enter the conversation, and there is no discord between the concept and the expressed thing. Thus a confessor, or a public person, when interrogated, is not judged except concerning the knowledge which he has acquired under another title; a merchant, as such, is interrogated about the goods which he has for sale. - There are also formulae which from custom have acquired a new force of signifying. Thus the words: "I do not know, he is not at home" are civil formulae for denying an answer, a visit.

But mental studiousness in narrowing, completing, or changing the obvious signification of a sentence uttered is ineffective for avoiding a lie. For what is kept silent in the mind, or is pronounced so low that it cannot be heard, is not part of external or significative speech. Cf. Laymann, L. 4, tr. 3, c. 13, n. 7.

But a lie ceases:

1. If the circumstances take away the formal signification of the words; as if in jest you say openly false things, or merely use formulae of courtesy, of consolation for the sick, or in our secular forum, you deny guilt or narrate a devised "system" of defense: the accused is not judged, in

that artificial defense, to open his mind in exercise through the words which he utters, but to use, as it were, a military stratagem.

Yet this cannot be transferred to boys or adolescents who, while they are being instructed, ought to confess their moderate faults to those interrogating them. For it is necessary that they consent to the correction of defects which is directed to their own good. And noble sincerity itself, made superior to inconveniences, is part of right instruction, while this would be gravely harmed through false excuses.

2. If you use a sentence truly amphibological: for this either signifies nothing or signifies also a true sense. Speech, however, is not made equivocal on account of the diverse senses which one word can have. Thus he who, to one clearly asking about the presence of Peter, responds: "Peter is not here," uses no amphibology because *est* also signifies "he eats."
3. If against another's unjust aggression, when another resource is lacking, you defend your silence or secret by a false statement. For just as another's unjust aggression effects that an action, which otherwise would be homicidal, is not, as an action, anything except defense of oneself, so also it will be the cause why words which, uttered outside aggression, would be lies, now at the same time are defensive of a secret and as such only are intended and chosen. Nor is it required that the aggressor be conscious of his unjust aggression. For what is materially unjust can also be repelled by force.

As Genicot-Salsmans says, I, 416, all admit that manner of responding can be chosen which seems necessary for preserving a secret. They differ only in explanation.

Some, not a few today, therefore pervert the definition of a lie, which they say is a denial of truth owed;

Others therefore deny that a lie is so intrinsically evil that it can never become lawful;

Others call it a broadly mental restriction, although it does not appear how the use of a word according to a sense of which the known circumstances permit no suspicion can be called broadly mental.

It has seemed preferable to us, according to the example of St. Thomas in the question concerning the killing of an unjust aggressor, which they also attempted to solve either through a conflict of rights, or through a restricted statement of the intrinsic malice of homicide, simply to use the principle of double effect, concerning which see I, 131.

Genicot-Salsmans also concedes that the right of legitimate defense of truth to be concealed can be invoked here.

We have treated the matter broadly in the periodical *Gregorianum*, vol. I, fasc. 1 and 3.

This opinion brings this advantage, that it restrains abuses, since just defense supposes present aggression, while what others concede can find a proportionate excuse even in spontaneous speech.

4. He who uses amphibology never lies; but he can sin, insofar as either he intends another's deception or permits it without a proportionate cause. Only the immediate proportionate utility which is procured by ambiguity can be intended.

5. With deplorable ease officious lies are multiplied today, so that human commerce is full of falsities and deceptions. By these arts childish instruction is corrupted and the sense of one's own dignity is diminished. Zeal for simple sincerity must be restored by words and examples.

Summary

A lie is defined: speech against the mind; and it is intrinsically dishonorable, since it contains an abuse of speech against the primary end of the faculty of speaking. Yet because it allows the order of man in himself and toward others to remain substantially intact, its malice is not of itself except venial.

That formal speech be had, it is necessary and of itself sufficient that, the circumstances being considered, you be judged to will to communicate your mind. If then, between the word of the mouth and the word of the mind, discrepancy is had, a lie is committed, which, whether it is directed to delight, as jocose, or to the utility of the speaker or hearer, as officious, or to causing damage, as pernicious, is cleansed from fault by no mental studiousness of changing the obvious signification of the words, or mental restriction. But amphibological words, although they can be illicit from another source, nevertheless are not a lie; and if you intend only the necessary defense of secrecy, it is lawful to defend silence or a secret against an aggression objectively unjust, even if not conscious, by a false statement.

But a boy or adolescent ought to confess his faults that are not so grave to a parent or teacher who interrogates him.

Tract VII: On the Virtue of Fortitude

Usefulness. - A twofold good especially can be procured for us by examination of this virtue: that we may discern the true virtue of Fortitude from its counterfeit species; and that we may know the way to be entered upon so that we may become sharers of so praised a virtue and learn to exercise it in so many present occasions.

Order of speaking. - First, the virtue itself must be sketched by us, according to the splendid documents which are supplied to us by the Angelic Doctor; then something must be said briefly concerning its acquisition and present exercise.

I. - Description of the Virtue Itself and Its Parts

I. Notion. Fortitude is a virtue of the irascible appetite, "restraining fears and moderating daring." (Cf. St. Thomas 2, 2, q. 123 art. 3, c.).

The irascible appetite regards good or evil (properly sensible) under the aspect of the arduous, or as to be obtained or fled with difficulty (1, q. 81 art. 2, c.; 1, 2, q. 23 art. 1). To this appetite pertain the passions of daring, fear, and hope. Fear is the passion by which one flees from a future, difficult evil, which cannot be resisted (concerning fear cf. 1, 2, q. 41). Daring is the opposite passion; for "fear flees a future harmful thing because of its victory over the one fearing: but daring attacks an imminent danger because of its own victory over the danger itself" (1, 2, q. 45, art. 1, c.).

Although it pertains also to fortitude to restrain rash daring, the principal parts of fortitude consist in removing the impediment of fear. And in fact it is commonly conceived as a good habit by which difficulties are overcome and fear is checked.

Moreover we consider the virtue as it can be acquired, infused, and perfected by the gift of the Holy Spirit. Acquired virtue shows itself in facility of acts: infused virtue furnishes us the power of exercising it connaturally in a supernatural mode; perfected by the gift of the Holy Spirit it acquires the quality of security which we shall soon indicate.

II. The act of the virtue. The chief action of the virtue is this, that, against imminent evils, it confirms the will in good. But confirmation in this again consists in this, that the will not only continues to abstain from every evil, but also that it remits nothing of its positive good action on account of that evil.

Wherefore a twofold function is assigned to fortitude: to sustain and to attack. To attack pertains to fortitude, insofar as it moderates daring; to sustain, however, insofar as it represses fear. "It is more difficult ...," says St. Thomas, "to repress fear than to moderate daring, because the danger itself, which is the object of daring and fear, of itself contributes something to the repression of daring, but operates toward the increase of fear" (2, 2, q. 123 art. 6, c.). The Holy Doctor demonstrates that the function itself of sustaining is more difficult than aggression by this threefold reason: "first indeed, because someone seems to sustain when invaded by someone stronger; but he who attacks invades in the manner of a stronger one. But it is more difficult to fight with one stronger than with one weaker.

Secondly, because he who sustains already feels the imminent dangers; but he who attacks has them as future. But it is more difficult not to be moved by present things than by future things. Thirdly, because sustaining imports duration of time; but someone can attack from a sudden movement. But it is more difficult to remain immovable for a long time than suddenly to be moved to something arduous." (Ibid., ad 1.).

III. The object of the virtue. Dangers of temporal evils, to be strongly undergone or attacked, are the common object of this virtue. But because the virtue would not be cardinal unless in that noble contempt of danger it showed itself principal, and the greatest temporal evil is death, thence its proper object is said to be the danger of directly imminent death; directly, insofar as it must be sustained for the sake of the good itself of virtue. Because again these dangers occur in a just war, therefore the virtue of fortitude is said properly to consist about dangers of death which are in war. Yet St. Thomas here, art. 5, c., understands war broadly, of every attack.

IV. Perfection of the virtue. 1. To attain the end of one's work, to escape evils or dangers, is not, as St. Thomas observes, always in the power of man; "but this the Holy Spirit works in man, when He leads him through to eternal life, which is the end of all good works and the escape from all dangers; and of this thing the Holy Spirit infuses a certain confidence into the mind, excluding the contrary fear; and according to this, fortitude is posited as a gift of the Holy Spirit" (2, 2, q. 139 art. 1, c.). Therefore, through the gift of the Holy Spirit, there is added to the virtue a certain confidence of attaining the end, dangers opposing in vain, according to that text, that "to those loving God all things work together unto good" (Rom. 8:28). By this confidence fortitude itself is wonderfully assisted.

2. Besides that supernatural perfection, fortitude is perfected by promptness in embracing the duty which is joined with danger, by strenuousness in exercising it; and by constancy by which, neither by sadness nor by duration, the soul is called back from a good purpose. Wherefore these are judged to give fortitude its integrity.

V. Christian necessity. Our religion wills us to be prepared for death for the sake of sustaining faith and any virtue whatever. Therefore all of us ought to be strong in the preparation of soul; in occasion we shall truly be so, with the grace of the Holy Spirit assisting.

VI. Potential parts of fortitude. By this name are designated various virtues which, in a less difficult matter, keep the soul upright and persevering in good. Thus magnanimity confirms the soul in the greatest goods or honors to be hoped for or obtained (2, 2, q. 129-133); magnificence directs great expenses to great works to be done suitably (2, 2, q. 134, 135); patience, against sadnesses, especially those which are inflicted by others, protects the good of reason (2, 2, q. 136); perseverance overcomes the difficulty arisen from duration of time (2, 2, q. 137).

To magnanimity St. Thomas also ascribes confidence, which confers promptness. Thus it comes about that the potential parts themselves give fortitude its integrity.

VII. Opposite vices. One can sin against fortitude not only by defect but also by excess. By defect, timidity and sloth are opposed to fortitude; by excess, fearlessness that loves dangers and immoderate daring too confident in itself.

II. - Examples, Occasions, Acquisition of Fortitude

VIII. Examples of the virtue. The most illustrious examples of fortitude, raised by the motive of charity to the highest perfection, are offered to us by the martyrs both of the first age of the Church and of the present century. Concerning martyrdom, its conditions and privileges, see III, 216. 217.

The daring of those who, without a proportionate cause, expose life has a false species of fortitude; duelists also have a false species. For fortitude does not look to this, that it approach dangers as such, but that by no danger it be delayed from doing good.

IX. Present occasions of the virtue. If we consider that constancy in every arduous work to be done is ascribed to the virtue of fortitude (cf. 2, 2, q. 139 art. 1), there are many occasions today of demonstrating fortitude of soul. Whether you consider public calamities, of the Church or even of the fatherland; or the many temptations which are created by worldly neo-paganism; or private difficulties of various kinds which often occur in following virtue: how strong is the man who will never be moved from the way of virtue, while so many seek excuses for gravest sins from the difficulty set before them! Although even today there is not lacking an occasion of bloody martyrdom; and missionaries, already strong in desiring an apostolic expedition, far from parents, from dear ones, from fatherland, can also have before their eyes, in more than one region, a probable death to be accepted for the faith of Christ.

X. Acquisition of the virtue. Sacred and profane letters, whether ancient or modern, celebrate with equal fervor the virtue of a man of constant soul, who has resolved to expect nothing from fraud or suspect arts, nothing from a less approved connivance, whom no fear deters, no difficulty breaks, whom, immovable in his good purposes, "Not the zeal of citizens commanding perverse things, - not the face of a threatening tyrant, - shakes in solid mind.... If the broken world should fall upon him, the ruins will strike him unafraid" (Horace, *Odes* 3). That man is free, and ready for every illustrious deed.

But a good so greatly loved and praised is at the same time most greatly desired today. They deplore, in external and public action, the timidity of good people[1]; we have to deplore so many personal and domestic falls of those who, on account of human annoyance, transgress the most sacred commands of God. Most opportunely, therefore, one asks concerning the means of strengthening the soul.

And this can already be a consolation to us, that fortitude is open to all in at least some degree. They say this who consider human psychology. What shall we say, we who are fortified by the protection of prayer and have the promised gift of the Holy Spirit?

Therefore these human means can be indicated: meditation on the price at which fortitude is to be held, on the noble glory which it communicates; - on the fragility and vanity of human things, so that more easily we may dominate them; - examples of strong men, which, by reading books, we can place before our eyes; - the companionship of those who demonstrate strength of soul; - small victories carried back from lesser dangers; - the practice of doing all things manfully; - praises themselves of fortitude in others; - finally hope in God exercised by frequent acts.

But if public utility holds us solicitous, we shall strive by every way to procure this, that both parents and those who are accustomed to instruct adolescents should set before themselves as something principal to instill and inculcate strength of soul already in infants themselves, then in adolescents and young people of either sex. From their tenderest years let them learn that there are certain things

absolutely forbidden and absolutely necessary: far from boys let there be ridiculous tales which have been accustomed to fill the childish imagination with vain fears; let them be taught to act strongly; and if there has been occasion, let them be praised concerning sincerity of intentions and words; in schools let the manifold method be applied which is at hand for proposing examples of men who have been distinguished by fortitude, especially of recent martyrs; let the adolescents themselves be ordered to weave praises of those men in their written themes; let stage plays be such as effectively commend noble actions: let every softness be denied to the body, but, on the contrary, let exercises of this kind be done which, adding vigor to the body, wonderfully assist the vigor of the soul. What more, since books are not lacking which happily treat the argument of instructing the will.

[1] "The greatest evil of this century," says Montalembert, "is the timidity of good people."

Summary

I. 1. Fortitude, which is numbered the third cardinal virtue, is in the irascible appetite "as restraining fears and moderating daring" (2, 2, q. 123 art. 3), so that against the greatest evils, even of directly imminent death, it firmly preserves the will in the good of reason. "Even of directly imminent death," we say, not because it firms the will against this evil alone, but because, unless even then the good will remained stable, the virtue would not exist complete.

2. The functions of fortitude are to sustain and to attack; it is divided into no subjective parts, since it orders a very special matter; but its potential parts are various virtues which in a less difficult matter keep the soul upright and persevering in good. They are, from the doctrine which St. Thomas borrows from Tullius Cicero himself, magnanimity, which, operating immediately about the passion of hope, confirms the soul in the greatest goods or honors to be hoped for or obtained (2, 2, q. 129-133); magnificence, which directs great expenses to great works to be done suitably (2, 2, q. 134, 135); patience, which, against sadnesses, especially those which are inflicted by others, protects the good of reason (2, 2, q. 136); and perseverance, which overcomes the difficulty arisen from duration of time (2, 2, q. 137).
3. Promptness in embracing the duty which is joined with danger, strenuousness in executing it, constancy, by which the soul is not called back from a good purpose either by sadness or by duration: these complete the virtue. But that integrity is attributed to the very virtues which are the potential parts of fortitude.
4. The elicited act of the virtue of fortitude intends the very honorableness of fortitude; but for the most part it will be commanded by the higher virtue of faith or charity.

Fortitude can be harmed not only by defect, or excessive fear, but also by excess in one contemning or loving dangers, or too confident in acting.

II. Among the most precious qualities of a man is to be placed the virtue of fortitude, by which one becomes truly ready and free for doing every good. But by right instruction and patient exercise it becomes open to all in some degree.

But a distinguished example of fortitude is the martyr, whose fortitude is raised by the motive of charity to the highest perfection.

III. With the virtue of fortitude is connected the gift of the Holy Spirit of the same name, by which gift the virtue is perfected, and the virtuous man is led through even to the end of eternal life. To that gift correspond the two fruits of patience and longanimity (2, 2, q. 139 and 140).

Tract VIII: On Temperance and Annexed Virtues, Especially Humility

Usefulness. - It will profit us not a little if, together with a more distinct knowledge, we procure for ourselves a true estimation of humility and mansuetude: both of which virtues, especially Christian, are today despised and held up to mockery by not a few.

Order of speaking. - After a brief exposition concerning the generic character of Temperance, we shall treat in distinct chapters of Humility, of Mansuetude, of Modesty, of Affability, and of Eutrapelia.

Chapter I: On Temperance

Notion of the virtue. Temperance, as a special cardinal virtue, is a virtue of the concupiscible appetite, moderating the delights of taste and touch. The concupiscible appetite is the common name of the passions which are concerned with delightful things.

Temperance is moderating. For, from common usage itself, temperance sounds as a certain moderation, a checking of natural appetency, by which excess is avoided. But in reality the passions by which we are borne toward delightful things, especially through their immoderation, easily are opposed to reason, to which they must be subjected. Wherefore chiefly as prosecutive they must be moderated by virtue.

But the cardinal virtue ought to moderate the more vehement concupiscences. Therefore Temperance is posited as moderating the delights of taste and touch, or of the flesh. (In antiquity venereal delights were called delights of touch.) Now, because generation provides for the necessary multiplication of men, but the use of food and drink provides for the necessary life of individual men, they are joined with delights which are restrained with the greatest difficulty. Yet this difference exists between each appetite, that the venereal appetite is accustomed to be strongest, although its satisfaction is not necessary to an individual man, while the appetite of food and drink is not such *per se*, except when necessity of life presses or on account of the vicious tyranny of custom.

Subjective parts or species of the virtue. Concerning delights of taste there are two virtues: abstinence and sobriety. This is not to be understood as though abstinence were concerned with food, and sobriety with drink. For abstinence moderates the delights of both food and drink, insofar as they are referred to the nourishment of the body, lest on account of their allurements or bodily necessity the mean of reason be exceeded. But drink, or another means, which intoxicates, in a peculiar mode disturbs the use of reason "insofar as it disturbs the brain by its vaporousness" (2, 2, q. 149 art. 2, c.). Wherefore for removing this a special virtue of sobriety is posited. We spoke of drunkenness in I, 473-484.

Concerning delights of the flesh there is chastity, which moderates the use of venereal things. It takes the name of modesty of purity insofar as it rules the surrounding delights in kisses, touches, and embraces, but of continence, insofar as it has to struggle with persevering difficulty. Concerning these things cf. IV, 17. 18.

Other delights of touch do not need a special virtue, because "the sensitive appetite, in which the passions are, is naturally subject to reason" (2, 2, q. 129 art. 2).

The potential parts of Temperance are various virtues which, like humility and mansuetude, restrain some propensity of appetite. Observe that it is by no means required that the potential parts of some virtue be in the same faculty in which the principal virtue has its seat. For there is question of the logical distribution of virtues, not of physical subordination.

Integral parts of the virtue. St. Thomas posits two: shamefacedness and honorableness. For the vice of intemperance, insofar as it detracts very greatly from man's excellence, is marked by a certain peculiar turpitude; while, on the contrary, a special comeliness belongs to the virtue of temperance.

Now through shamefacedness, which rules fear of turpitude and reprehension, man flees from those things which are worthy of reproach, while by the name of honorableness is here designated the inclination toward following the comeliness of temperance. Does not the integral virtue abhor contrary acts and love and follow its own proper good?

Opposite vices. Men sin against temperance especially by excess. But this excess is generically called intemperance; but it is specially named gluttony when the appetite of food and drink is served too much. Yet one can also sin by defect. This defect is called insensibility, by which someone flees delight so much that he flees that very thing which is necessary for the conservation of nature (2, 2, q. 142 art. 1, c.).

Summary

I. Temperance is a virtue of the concupiscible appetite, which it moderates in seeking the delights of taste and touch.

Its subjective parts are abstinence and sobriety, chastity and modesty of purity. To this is referred continence, which, understood concerning the purpose of virtue persevering in the very rebellion of the passions, denies the facility which pertains to the nature of acquired virtue. Cf. 2, 2, q. 155 art. 1.

There are also other propensities to be moderated, which are not only in the concupiscible appetite. That moderation is ruled by special virtues which are assigned to Temperance as potential parts. Such are Humility and Mansuetude, concerning which we shall treat below.

II. Because generation provides for the necessary propagation of men, but the use of food and drink provides for the necessary life of individual men, therefore they are joined with delights which are restrained with the greatest difficulty. Yet this difference exists between each appetite, that the venereal appetite is generally strongest, while the appetite of food or drink is not such *per se*, except when necessity of life presses, or on account of the tyranny of vicious custom.

III. Moreover abstinence commonly rules the delights of food and drink, insofar as they have order to the sustenance or nourishment of the body; sobriety peculiarly prevents the disturbance of drunkenness.

Concerning chastity and modesty of purity there is speech in volume IV.

IV. But temperance is integrated from shamefacedness, which abhors the peculiar turpitude of intemperance; and from zeal for the comeliness of temperance, which is distinguished by the name of honorableness.

V. One sins against temperance especially by excess, which is generically called intemperance, but specially gluttony when there is question of the appetite of food and drink. One sins also by defect, to which is given the name of insensibility.

Chapter II: On Humility

I. Notion of the virtue. Humility is a special virtue annexed to Temperance or Modesty, by which man, considering that he has received all things and his very being from God, moderates the appetite of his own excellence according to divine ordination.

By this definition we indicate the logical place of humility, its root or foundation, its object, and its proper honorableness. A few things concerning each.

1. **Logical place.** It is annexed to Temperance, not because it has its principal seat in the sensible appetite, or because its proper object is concupiscence of the lower appetite, but because it has the mode of temperance, i. e. the repression of some appetite easily becoming insolent. It is annexed to Modesty, because modesty is placed under temperance as generally moderating those things which are less difficultly restrained; but the appetite which humility regards has lesser parts in sense, and needs not only a bridle but also a spur.

2. **Root or foundation.** In every rational inclination a certain truth shines before the mind, which is the principle of the practical judgment that gives to the obedient will its present inclination. Now the humble man uses, as foundation and guide, this truth, that he has received nothing from himself, but all good things from God gratuitously giving. All good things, I say, even existence itself. "But what do you have that you have not received?" St. Paul asked, 1 Cor. 4:7. "Why ... do you glory as though you had not received?" He who has received all things is, in himself, nothing.

Wherefore St. Bernard (*On the Degrees of Humility*, c. 1) used to say that humility is the virtue "by which someone, by a most true knowledge of himself, becomes vile to himself." Yet we prefer to place the formal root of humility, rather than in one's own nothingness itself, in the origin of every good from God. For consideration of nothingness, as such, can lead to various pursuits but to no definite one *per se*. For from this you can be moved to sadness or despair; from this also to unbridled ambition of obtaining what you do not have; from this also to impatience, anger, and cursing. Besides, since all men, by the same consideration, are equally reduced to nothingness, there is no reason for relative humility by which one shows himself inferior to another. Therefore as long as you do not think back upon all things as freely given by God, you have no foundation of humility. Formerly indeed, he who professed himself to be and to be worth nothing tacitly testified to divine benignity in him. (Cf. what is said by Lessius, *Virt. card.*, L. IV, c. 4, n. 53). But because today not a few profess lowliness with an entirely different spirit and persuasion, it seemed more opportune to indicate expressly the formal reason of the consideration.

3. **Object.** We say the object is the appetite of one's own excellence. Appetite signifies the impulse of a natural inclination. One's own excellence is almost the same as "superiority," i. e. the quality, merit, perfection of the subject, considered less in itself than insofar as it gives some relative preeminence. Moreover humility moderates or checks that appetite. But excellence is an arduous good; and, for the greatest part, the appetite of excellence is spiritual. Wherefore the seat of humility is the irascible appetite and the will (cf. 2, 2, q. 162 art. 3, ad

3). Thus the same virtue, considered according to its mode, which is the repression of some impulse, is ascribed to the concupiscible appetite; but, with attention to its object, it pertains to the irascible appetite and the will.

4. **Proper honorableness or norm of moderation.** We say that moderation is done according to divine ordination. Certainly, in some way, the divine will is the rule of every just moderation. But when there is question, for example, of temperance, the need of the subject manifests this divine will to us. Here, however, since the circumstances on account of which excellence varies among men are for the greatest part hidden from us, and it is not in our power to acquire this or that excellence, we are ruled more immediately, in desiring excellence, by the divine will alone. Our will is less actively regulating under the divine will. After it has excluded illicit arts, it ought to await excellence from God almost as a poor man awaits food from a rich man. That is, through endowments, faculties, circumstances, and fates, God leads us as if by the hand and permits access to this or that excellence to us. But humility, by consideration of our dependence on God and gratitude, willingly embraces that divine ordination and thus moderates the appetite itself. Wherefore, in tractate 25 on John, n. 16 (P. L. 35, 1604), St. Augustine says: "Pride does its own will, humility does the will of God." Hence, *On the City of God*, L. 14, c. 28 (P. L. 41, 436), suggests to us this definition of humility: "it is love of God even unto contempt of self." But St. Bernard, sermon 26 *de diversis* (P. L. 183, 610), says: "The sum of all humility seems to consist in this, if our will is subject to the divine will as is fitting." This also is inculcated more than once by St. Thomas (2, 2, q. 161, art. 3, c. Cf. art. 1 ad 5; 2, ad 3; 4, *sed contra*; q. 162 art. 5; art. 6, c.).

II. Excellence of the virtue. From this it is understood in what way, according to St. Thomas, 2, 2, q. 161 art. 5, the virtue of humility can claim for itself the first place after the theological virtues, after the intellectual virtues, and after justice, especially legal justice. But effectively, while it removes every rebellion against grace radically, it closes the way to every sin, and opens it to every virtue (cf. 2, 2, q. 161 art. 6 ad 2). Because it fosters the affection which befits a creature, it is a certain practical adoration by which the divine Majesty is adored by most diverse acts. Wherefore St. Augustine could write: "Humility is almost the one Christian discipline." (*Sermon* 351, III, 4; P. L. 39, 1538. 1539. Cf. also *On Virginity*, c. 31: "Against pride, the mother of envy, the whole Christian discipline chiefly fights." P. L. 40, 413).

Humility thus fully understood can also be called a certain justice toward God, rendering more perfectly to God what is His. Under this respect it can be annexed to the virtue of justice.

You will ask how humility also subjects us to other men?

Resp. It effects this, because, according to divine ordination, our excellence has this mode, that many surpass us simply, while all possess some divine gift which we ought to put before our own defect. (Cf. 2, 2, q. 161 art. 3, c.).

Christian perfection of the virtue. Christian humility is perfected by contempt of earthly sublimity, which is done according to divine ordination. For this is perpetual, that positive mortification is most apt for tempering an appetite which easily becomes excessive. But earthly sublimity is that which by its external splendor most greatly allures the senses and excites the impulse of passion. Therefore contempt of it has the strongest force for firming humility. Besides, through that contempt there is

almost removed the difficulty which man experiences in assenting to the divine will when it excludes or prohibits him from a higher place. Yet only earthly sublimity can be contemned; for exaltation is promised to the humble themselves; and because Christ humbled Himself unto death, therefore God exalted Him (Phil. 2:9). And contempt itself of earthly sublimity must be done according to divine ordination, since the supreme rule of humility is the divine good pleasure, and because for the common good it is necessary that there be various orders, and that some preside and others be subject. God could not approve absolute contempt of human excellence.

But this perfection is Christian, both because it is inculcated in the sacred letters of the New Testament; and because outside Christianity it is unknown; and because through the grace of Christ alone can man carry off that victory over himself.

Moreover this perfection is cultivated both by religious obedience and by voluntary poverty.

By the name of religious obedience there is commonly understood, materially, a certain rather universal abdication of one's own choice and an enslavement into the hands of another by whom the religious is governed. But formally it is done for worshipping God; i. e. in the way of pursuing perfection and exercising charity, the religious seeks a more perfect adaptation to the divine will, while, free from the deception of self-love, he hands himself over to be governed by a legitimate Superior, who at the same time, prudently chosen, tacitly promises him that he will be a master of perfection and head of the work of charity.

But by voluntary poverty, one strips away the foods of vain glory which is contrary to humility.

Opposite vices. They are: pride, or the inordinate appetite of one's own excellence; also empty glory, which too greatly desires the manifestation of excellence, seeking a certain ostentation of endowments whence glory may result among men. Concerning these vices something has been said in volume I, nn. 467. 469.

In this way one sins against humility by excess. But by defect the vicious propensities opposed to humility are both timidity, by which someone, through fear of danger or difficulty, or by fear and sloth, and pusillanimity, by which someone, by flight from labor and narrowness of mind, does not dare those things which, according to divine ordination, are in his power.

Summary

I. Humility is a special virtue, annexed to Temperance or Modesty, by which man, considering that he has received all things and his very being from God, moderates the appetite of his own excellence according to divine ordination.

It is a special virtue, because it presides over a special inclination to be restrained, toward following great and glorious things.

It is annexed to Temperance, not because it has its principal seat in the sensible appetite, or because its proper object is concupiscence of the lower appetite, but because it has the mode of temperance, i. e. the repression of some appetite.

Since, however, excellence is an arduous good, its appetite postulates not only inhibition but also the virtue which impels man, according to right reason, toward pursuing truly great things.

It is annexed to Modesty, because Modesty is placed under Temperance as generally moderating those things which are less difficultly restrained, and humility regards an appetite which has lesser parts in sense and which needs not only a bridle but also a spur.

But insofar as humility subjects man to God, it is referred to religion and becomes a potential part of justice.

Since the mean of this virtue cannot be taken from a definite measure known to us, but requires attention to many circumstances, especially varied and uncertain to us, we are ruled more immediately by the divine will in desiring excellence, so that for this reason that appetite is said to be moderated according to divine ordination.

But we are most greatly adapted to that norm by consideration of our dependence on God in every positive good and in the benefit itself of existence.

II. The seat of humility is at the same time the will and the irascible appetite.

III. According to St. Thomas, 2, 2, q. 161 art. 5, the virtue of humility can deservedly claim for itself the first place after the theological virtues, after the intellectual virtues, and after justice, especially legal justice; and as contrary to pride, it removes all things which obstruct perfection.

IV. But humility acquires Christian perfection in contempt of earthly sublimity, if that contempt itself is done according to divine ordination.

That perfection is cultivated eminently both by religious obedience and by religious poverty: religious obedience, insofar as the religious pursues perfect adaptation to the divine will through obedience; religious poverty, insofar as through it the religious removes from himself the foods of vain glory.

V. One sins against humility by excess through pride and presumption, through vain glory and ambition; but by defect through timidity and pusillanimity, i. e. through vices which are opposed to fortitude and magnificence, so that someone refuses to tend toward that which is proportioned to his power and truly desirable (2, 2, q. 133 art. 1).

Chapter III: On Mansuetude and Clemency

I. On Mansuetude. 1. **Notion.** Mansuetude is defined as a virtue moderating anger according to right reason. Because it is moderating, it is ascribed as a potential part to the virtue of Temperance. But once the nature of anger has been explained, almost the whole virtue has been explained.

2. Anger properly so called is the sensitive appetite of vengeance. Indeed it gave its name to the appetite in which it is, which is called irascible. But vengeance signifies an evil, after sin, inflicted upon one transgressing or sinning. This evil can be sought without a sensible movement of concupiscence or with sensible commotion. That commotion can be antecedent to the deliberation of the will, or follow such deliberation, and this either spontaneously, or from the very decree and action of the will.

3. The appetite of vengeance can be illicit from the object, from the intention or end, and from the mode or subjective commotion. From the object it is illicit if vengeance is sought without a sufficiently proved guilt or beyond the merit of the guilt. From the end it is illicit if it is exercised from hatred, or by resting in another's evil. But through vengeance a multiple good can be sought: the correction of the sinner; - his restraint; - the security and quiet of others; - the conservation of justice and the honor of God.

From the mode it is illicit insofar as too great an impulse of passion drags the will along with it. Yet just as, even in the right use of marriage, the mind suffers a certain captivity under sense which nevertheless is not sinful, so St. Thomas observes that anger is not to be morally reprehended because "in the very execution of the act it somewhat impedes the judgment of reason" (2, 2, q. 158, art. 1 ad 2), but that anger through zeal or voluntary anger, by which, according to the order of reason, the sensitive appetite is moved, is good and praiseworthy.

Yet because we are too prone to desiring vengeance for injuries, no virtue is named whose office is to excite anger according to right reason.

If anger is the appetite of vengeance, we have whence more greatly to detest and flee the easy angers which we experience on account of adverse things which occur not rarely, or in the smallest matters, without another's fault or the intervention of a free cause. For remotely and indirectly they prepare blasphemy, since no other free cause has efficacy in these things besides the divine will.

4. **Function and merit of mansuetude.** Mansuetude not only checks the anger of the sensitive appetite, but imposes a mode on every appetite of vengeance. Therefore it has the merit of checking passion and obeying justice. It makes man master of himself, so that he can freely judge and pursue truth.

II. On Clemency. This virtue, according to reason, remits something from punishments owed by common law. We say according to reason, because not every penal indulgence is worthy of praise. Too often today it is commanded by a motive that is not right, or the mode is exceeded in such a way that society is no longer sufficiently preserved from delicts. And even if, on account of the morbid

propensities of the delinquent, punishments properly so called do not seem to be taken, nevertheless by a suitable method provision ought to be made for the common peace and quiet.

Clemency, because it remits punishments, is the proper virtue of him who has authority. But all of us can be merciful.

Summary

I. Mansuetude is a virtue moderating anger according to right reason. It is, on account of the mode which it preserves, a potential part of Temperance.

II. Anger is the appetite of vengeance: this can be desired well and badly. For vengeance, or evil imposed upon one sinning, if it is exercised from hatred, by resting in another's evil, is altogether illicit. But if through vengeance we seek some good: the correction of the sinner, his restraint and the quiet of others, the conservation of justice and the honor of God, then, the due mode being preserved, it is licit (2, 2, q. 108 art. 1).

Although in "the very execution of the act it somewhat impedes the judgment of reason" (2, 2, q. 158 art. 1, ad 2), consequent or voluntary anger, by which, according to the order of reason, the sensitive appetite is moved, or anger through zeal, is good and praiseworthy.

Yet because we are more prone to desiring vengeance for injuries, no virtue is named which is an exciter of anger according to right reason.

II. The merit and utility of the virtue is in this, that it makes man master of himself, and therefore able freely to judge and pursue truth.

III. Akin to mansuetude is clemency, which, according to reason, remits something from punishments owed by common law. Cf. 2, 2, q. 157.

Chapter IV: On Exterior Modesty, Affability, and Eutrapelia

Importance of the argument. We ought to be solicitous about exterior conversation and composition itself. For these are subject to our free will. But since through externals we communicate with others, the diligence of virtue can prepare many goods, while negligence and carelessness can lose many goods or even convert them into positively evil things.

But three virtues especially pertain to our matter: exterior Modesty, Affability, and Eutrapelia.

I. On exterior Modesty. A twofold character of it can be distinguished: composition of the body, and exterior furnishing and adornment.

By suitably composing the body, modesty effects that movements and gestures are such as agree with the agent, according to himself, and with the persons with whom he acts, with the affairs which he treats, and with the places in which he lives (2, 2, q. 168 art. 1).

Let exterior furnishing be simple, adapted to honorable custom, lest by excess it offend the souls of others, especially of the poor; let it be stained by no vain glory or evil end. Concerning the adornment of women, St. Thomas observes (2, 2, q. 169 art. 2): a) zeal for pleasing the husband is lawful for a wife; b) the intention of pleasing by the body cannot lawfully be had by women "who do not have husbands, nor wish to have them, or are in a state of not having them"; c) women who adorn themselves so that they provoke others to concupiscence sin gravely; d) "but if it is from a certain lightness, or even from a certain vanity on account of a certain boasting, it is not always a mortal sin, but sometimes venial."

II. On Affability. Affability is "the virtue by which man is suitably ordered to other men in common conversation, both in deeds and in words, namely, that he has himself toward each one according to what is fitting" (St. Thomas, 2, 2, q. 114 art. 1, c.). From this it comes about that man "conducts himself in meetings neither too flatteringly nor too harshly" (Lessius, c. 47, n. 47), but is of pleasing intercourse.

Because it exhibits common signs of that friendship which joins all men among themselves, it is sometimes called friendship.

It does not beget an obligation strictly so called.

Two vices are opposed to it: a) adulation, by which someone too greatly strives in living together to please others. Yet more strictly he is called an adulator who, for the sake of his own utility, approves and praises all things.

b) Moroseness or contention, by which one sins by defect. The morose and harsh "are difficult everywhere, contradictors everywhere, nowhere do they accommodate themselves" (Lessius, ibid., n. 51).

III. On Eutrapelia. This effects that in jests our conversation is pleasing. More generally, it rules the appetite of rest of soul or relaxation after labor, for example through play, taking care lest one recede too much from gravity, and procuring that relaxation "be worthy of the time and the man" (2, 2, q. 168 art. 2). Against this virtue one can sin not only by excess, which nevertheless is more frequent,

but also by defect, whether someone without cause deprives himself of the useful seasoning of delight, or especially shows himself burdensome to others and impedes the delights of others (cf. 2, 2, q. 168, art. 4).

Summary

I. There is a twofold character of exterior modesty. The one cares for composition of the body, so that movements and gestures are such as agree with the agent, according to himself, and with the persons with whom he acts, with the affairs which he treats, and with the places in which he lives (2, 2, q. 168 art. 1).

The other modesty regards exterior furnishing and adornment (2, 2, q. 169).

II. By affability, man in his common conversation has himself toward all as is fitting for him.

III. Finally, under modesty itself is counted eutrapelia, by which the appetite of rest of soul or relaxation after labor is ruled, for example through play, by taking care that delight not be sought from some evil thing or one harmful to another, that one not recede too much from gravity, and by procuring that relaxation "be worthy of the time and the man" (2, 2, q. 168 art. 2). Against this virtue one can sin by excess, but also by defect, whether someone without cause deprives himself of the useful seasoning of delight, or especially shows himself burdensome to others and impedes the delights of others (2, 2, q. 168 art. 4).

Conclusion

After, in treatise VI of the first volume, we proposed in a general view the aids by which our liberty is assisted, in the present volume we have treated more fully of the nature of the aids which are contained in the virtues.

Therefore we have spoken of the theological virtues, by which we immediately reach God; we have spoken of the moral virtues which are also infused into us so that they may be our good habits adapted to the theological virtues, and so that our new nature, which is sanctifying grace, may be furnished with powers by which our supernatural action can at the same time become connatural. It was permitted to suggest not a few things concerning several gifts of the Holy Spirit, by which we can most promptly yield to God inviting.

But to the moral virtues the divine rule is proposed as to be followed. How much it differs from the human rule, St. Thomas demonstrates by this example: "in the taking of foods, according to human reason, the mode is established so that it not harm the health of the body nor impede the act of reason; but according to the rule of divine law it is required that man chastise his body and reduce it into servitude through abstinence from food and drink, and other things of this kind" (1, 2, q. 63, art. 4).

Indeed, in Christian discipline, the virtues that are most human obtain a summit above the human, to be pursued more fully by some, to be esteemed in mind and followed by acts by all: thus continence is superimposed upon chastity, voluntary poverty upon liberality, mortification upon temperance, contempt of earthly sublimity upon humility.

But what shall we say concerning charity, which in its Christian embrace positively includes even enemies; which, forgetful of itself, considers what belongs to others (Phil. 2:4); by which man loves

his neighbor as he himself is loved by Christ?

Those riches have been heaped up in us for working. But with divine powers what work do we have to perform except a divine one?

Therefore those Christians err who ponder an earthly building, in the construction of which they ought merely to attend to avoiding divine offenses.

Reborn in Christ, from water and the Holy Spirit, according to the spirit which we have from God, a building must be raised by us, which at the same time will be ours, Christ's, and others'. Ours, because it will prepare our eternal mansion in the glorious kingdom of God; Christ's, because it will be the work of His grace and will yield to His honor and praise; of other men, because it will be turned to the utility of private persons and of public society. For to those seeking first the kingdom of God and His justice, all these things will be added (cf. Matt. 6:33).

Nor is a division of life into two parts, one supernatural, the other earthly, to be admitted. Almost as fruit-bearing trees so elaborate the seed by which they provide for their own perpetuity that it is surrounded by a savory fruit which, without detriment to the seed, man can pluck and eat, so a structure approved by the divine Spirit cannot be raised by us without offering to others a manifold fruit of beneficence to be gathered.

But these things are unknown by too many, even Christians. Therefore they have to be learned, even from the moral theologian. He, while he furnishes these things, in no way goes beyond the limits of his province. Ought he not to propose and explain moral duties? Now by the law of tending toward sanctity absolutely all, no one excepted, are bound (*Rerum omnium*, Jan. 26, 1923, concerning St. Francis de Sales). Therefore for our part let us contribute so that very many, conscious of human and Christian dignity, may consider themselves and act as "fellow-citizens of the saints and domestics of God, built upon the foundation of the apostles and prophets, Christ Jesus Himself being the chief cornerstone, in whom the whole building, being constructed, grows into a holy temple in the Lord" (Eph. 2:19-21).

Corrigenda

P. 23, last line: *formalum*, read *formulam*.

P. 142, 6th line from below: *qua simeditatione*, read *quasi meditatione*.

P. 188, last line: *accusationem*, read *accusatione*.

P. 191, line 2: *perscrutantur*, read *perscrutantur*.

P. 202, 3rd line from below: *suadent*, read *suadet*.

P. 221, 6th line from below: *divinis*, read *divini*.

P. 226, line 9: *negare*, read *negari*.

P. 437, line 7: *jubebatur*, read *iubebat*.

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